SUPREME COURT OF THE UNITED STATES.

No. 353.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, APPELLANTS,

vs.

JAMES T. SOUTTER, SURVIVOR, &c.

AND

No. 354.

ALEXANDER FLEMING, APPELLANT,

vs.

JAMES T. SOUTTER, SURVIVOR, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Receiver's report for October, 1865	1	1
Statement of operation of road for same month	2	2
Receiver's report for November, 1865	3	3
Statement of operation of road for same month	4	4
Clerk's certificate of payment of money into court	5	5
Order of court of said certificate being filed	6	5
Bond to United States for benefit of judgment creditors	7	6
Bond to Hans Crocker	9	8
Exceptions of F. P. James et al. to bond	11	10
Certificate of clerk as to holders and coupons, &c	12	11
Order of payment of coupons	13	11
Exceptions of Hans Crocker to bond	14	13
Receiver's report for December, 1865	15	13
Statement of operation of road for same month	16	14
Petition of F. P. James for an order applying money in hands of receiver	18	15

	Original.	Print.
Answer of Milwaukee and Minnesota Railroad Company to petition of James	31	21
Receiver's report for January, 1866	46	48
Statement of operation of road for same month	47	50
Report of receiver for February, 1866	48	50
Petition of complainant for an order of sale	49	51
Motion of Milwaukee and Minnesota Railroad Company for attachment, &c.	51	53
Affidavit of Nicholas Murray	81	75
Affidavit of Wm. J. C. Forster	82	75
Affidavit of E. J. Patterson	83	76
Letter of receiver	87	80
Letter of Merrill, manager of St. Paul county road, to Crocker	88	80
Letter of Crocker, receiver	90	82
Letter of Merrill to Milwaukee and Minnesota Railroad Company	91	83
Notice of motion	93	84
Order denying petition for modification of order of 18th July, 1865	96	86
Petition of Milwaukee and Minnesota Railroad Company for application of money in hands of receiver	96	86
Supplemental answer of Milwaukee and Minnesota railroad to petition of James	97	87
Notice of motion for attachment, with proof of service	99	88
Report of Hans Crocker, receiver	131	112
Exceptions to report	134	115
Affidavit of Daniel Wells, jr	135	115
Petition of Hans Crocker, receiver	135	116
Answer of Alexander Mitchell and others to motion for attachment	137	117
Affidavit of M. H. Carpenter	180	149
Supplemental mortgage	181	149
Report of H. L. Palmer, auditor	186	152
Exhibit No. 1 to said report	192	157
Exhibit No. 2 to said report	193	158
Exhibit No. 3 to said report	194	159
Exhibit No. 4 to said report	196	161
Exhibit No 5 to said report	197	162
Exhibit No. 6 to said report	197	162
Exhibit No. 7 to said report	198	163
Exhibit No. 8 to said report	198	163
Exhibit No. 9 to said report	198	163
Deposition of Wm. L. Hinsdale before the auditor	200	164
Deposition of J. P. Whaling before the auditor	206	170
Deposition of R. A. Wilder before the auditor	206	170
Deposition of Hans Crocker before the auditor	207	170
Deposition of Wallace Pratt before the auditor	208	171
Deposition of Hans Crocker before the auditor	209	172
Deposition of E. A. Patterson before the auditor	209	172
Deposition of J. P. Whaling before the auditor	210	173
Exceptions of Milwaukee and Minnesota Railroad Company to report of auditor	210	173
Exceptions of Milwaukee and St. Paul Railway Company to report of auditor	211	173
Hearing of motion for attachment, &c	212	174
Order of court on hearing exceptions to report of auditor	213	175
Appeal of Milwaukee and St. Paul Railway Company	213	175

	Original.	Print.
Petition of T. L. Ogden for allowance of solicitor's fees	214	176
Order on same	215	176
Petition of Russell Sage	215	177
Order on same	216	177
Order confirming reports of auditor, &c	216	178
Order requiring receiver to disburse moneys in his hands	216	178
Petition of F. P. James for appeal	218	179
Order of court denying the appeal	218	179
Motion of Milwaukee and Minnesota Railroad Company to modify order of 19th April, 1866	218	179
Bond of Milwaukee and St. Paul Railway Company on appeal	219	180
Petition of D. M. Hughes and others	220	181
Order on said petition	222	182
Bond of Milwaukee and Minnesota Railroad Company to Hans Crocker, receiver	223	182
Petition of complainant for an order of sale	225	184
Decretal order of sale	227	185
Petition of A. Fleming for appeal	231	189
Order allowing appeal	231	189
Bond of A. Fleming on appeal	234	190
Exceptions to bond by complainant	237	192
Order approving bond	238	193
Petition of Minnesota company for appeal	238	193
Order allowing appeal	239	193
Bond of Minnesota company on appeal	240	194
Exceptions to bond by complainant	244	196
Order approving bond	244	197
Answer of Minnesota company to petition for receiver	244	197
Affidavit of A. C. Gunnison	251	201
Certificate of clerk	253	205
Citation and service	254	205

1 JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

NOVEMBER 30, 1865.

This day came the receiver and filed his report, and also a statement of the operation of the eastern division for the month of October, 1865, as follows, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of October, 1865.

H. CROCKER. *Rec.*

Balance, as reported Sept. 30, 1865	$74,632 76
Receipts Mil. and St. Paul R'way Co	50,461 34
	125,094 10

Disbursements:

Right of way, east. div	$611 00
First mortgage coupons	192 07
Mil. city coupons	799 95
Balance October 31st, 1865	123,491 08
	125,094 10

STATE OF WISCONSIN, *lwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of October, 1865, according to his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this twentieth day of November, A. D. 1865.

W. L. HINSDALE,
Notary Public, Milwaukee Co., Wis.

2 *Statement of the operation of the eastern division of La Crosse and Milwaukee railroad for the month of October, 1865.*

Earnings:	
From freight	$62,123 49
passengers	7,829 98
mails, rents, and miscellaneous	941 70
Total earnings	70,895 17
Expenses:	
Repairs of road	$4,933 15
bridges	125 00
fences	16 65
buildings	1,032 58
locomotives	2,129 91
cars	3,533 51
tools and machinery	306 00
Operating:	
Management and general officers	1,204 45
Station service	1,851 35
Stationery, advertising, and printing	169 60
Conductors, baggagemen, and brakemen	1,352 83
Train and station supplies	355 75
Engineers, firemen, and wipers	1,738 75
Oil and waste	820 67
Fuel	4,854 17
Loss and damage of freight and baggage	397 08
Miscellaneous expenses	81 24
Animals killed	165 43
Telegraph	9 30
Rents	12 50
Revenue stamps	7 50
Other expenses:	
Taxes and insurance, U. S. revenue	1,884 62
Total expenses	26,982 04

RECAPITULATION.

Gross earnings	$70,895 17
Total expenses	26,982 04
Net earnings	43,913 13

J. P. WHALING, *Auditor.*

Auditor's Office, Milwaukee, November 1, 1865.

3 DECEMBER 30, 1865.

This day came the receiver and filed his report, and also a statement of the operation of the eastern division for the month of November, viz:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD *et al.*

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of November, 1865.

H. CROCKER, *Receiver.*

Balance on hand, October 31, 1865, $123,491 08.
Receipts, none.

Disbursements:

Legal expenses	$1,095 45
Encumbrances, E. div	127 86
1st mortgage coupons	35,084 37
Milw. city coupons	1,095 84
	37,403 52
Bal. on hand Nov. 30, '65	86,087 56
	123,491 08

In the above bal. of $86,087 56 is included 2d mort'ge coupons past due, amt'g to $62,440.

H. CROCKER, *Rec.*

STATE OF WISCONSIN, *Milw. Co., Wis., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milw. railroad for the month of November, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of Dec'r, A. D. 1865.

W. L. HINSDALE,
Notary Public, Miwl. Co., Wis.

4 Statement of the operation of the eastern division La Crosse and Milwaukee R. R. Co'y, for the month of November, 1865.

Earnings:	
From freight	$26,403 19
passengers	8,900 09
mails, rents, and miscellaneous	868 05
Total earnings	36,171 33
Expenses:	
Repairs of road	$4,408 92
bridges	29 06
fences	111 87
buildings	448 94
locomotives	1,993 20
cars	2,400 15
tools and machinery	206 40
Operating:	
Management and general officers	1,268 75
Station service	2,036 45
Stationery, printing, and advertising	235 14
Conductors, baggagemen, and brakemen	772 00
Train and station supplies	366 11
Engineers, firemen, and wipers	1,778 84
Oil and waste	578 40
Fuel	6,160 74
Loss and damage of freight and baggage	151 76
Miscellaneous expenses	12 47
Revenue stamps	18 27
Other expenses:	
Taxes, U. S. revenue	904 28
Telegraph	6 38
Total expenses	23,888 13

RECAPITULATION.

Gross earnings	$36,171 33
Total expenses	23,888 13
Net earnings	12,283 20

Auditor's office, Milwaukee, December 30, 1865.

5 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law on the first Monday of January, A. D. 1866, at the city of Madison, in said district of Wisconsin.

Present and presiding, the Hon. Andrew G. Miller, district judge.

On the fourth day of the term, to wit, on the fourth day of January, A. D. 1866, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Co. *et al.* } In equity.

This day came the complainant, by his solicitor, Mr. Ogden, and filed the certificate of the clerk, showing that the full amount due on the decree, with interest and costs, had been paid into court as follows, to wit

CLERK'S OFFICE, UNITED STATES CIRCUIT COURT
FOR THE DISTRICT OF WISCONSIN,
Milwaukee, January 3, 1866.

I hereby certify that on the 30th day of December, A. D. 1865, the Milwaukee and Minnesota Railroad Company paid to me the sum of four hundred and sixty-one thousand eight hundred and eighty-three dollars and thirteen cents, the amount due, principal and interest, on the decree of Sept. 28, 1865, in the case of James T. Soutter, survivor, *vs.* The La Crosse and Milwaukee Railroad Company and others, which amount is deposited with Messrs. Marshall & Ilsley to the credit of said circuit court, and also paid the sum of five thousand five hundred and forty-eight dollars and twenty-three cents, the taxed costs in said cause.

In testimony whereof I have hereunto set my hand and official seal this 3d day of January, A. D. 1866.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

[5-cent int. rev. stamp.]

Whereupon, on reading and filing the certificate of the clerk of this court showing that the Milwaukee and Minnesota Railroad
6 Company has paid into court the entire amount with interest found due to the bondholders by the decree of sale made in this suit on the 28th day of September, A. D. 1865, on motion of Thomas L. Ogden, solicitor of complainant, it is ordered that the said amount be paid to the bondholders as follows, that is to say:

First. That on the bonds from which the coupons paid by the receiver were detached, interest at seven per cent. on such coupons from September 27, 1864, to September 1, 1865.

Second. That on the remaining bonds, on the coupons corresponding to the said coupons paid into court by the receiver,

interest at seven per cent. on such coupons from said 27th day of September, 1864, to the 28th day of September, A. D. 1865, and interest on such interest, and the amount of the coupons from the 28th day of September, 1865, to January 3, 1866, and the amount of the coupons.

Third. That the sum remaining after the said payments shall be divided into one thousand equal parts, and one part shall be paid on each of said bonds.

And on reading and filing the affidavit of Selah Chamberlain showing the loss of certain coupons, and on filing a bond of said Chamberlain with Russell Sage as surety, and on filing the affidavit of Daniel Wells, showing that certain coupons attached thereto were punched by mistake in 1861, and a further affidavit of Selah Chamberlain, showing that he is the owner of said coupons and that they are unpaid, and on motion of John W. Cary, solicitor for said Chamberlain, ordered, that all of said coupons be included in the calculation to be made in this cause, of the money paid into court, and that the proportion belonging to said coupons be paid to said Chamberlain on the order of this court.

And came the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and on its motion, it is ordered that on presentation to Hans Crocker, the receiver in this cause, and to the Milwaukee and St. Paul Railway Company of the certificate of the clerk of this court, that the Milwaukee and Minnesota Railroad Company has complied with the conditions provided by the order or orders of this court in this cause entitling it to possession of the mortgaged premises in this cause, that the said Hans Crocker and said Milwaukee and St. Paul Railway Company, its officers, directors, and employees, forthwith deliver to said Milwaukee and Minnesota Railroad Company, or any officer, or the solicitor of said last-named company demanding the same, full possession of the mortgaged premises in this cause, viz: The railroad, appurtenances, and things thereto belonging, from Milwaukee to Portage, together with the rolling stock and other things mentioned in said order or orders of this court in that behalf made July 18, 1865; that in case the
7 receiver under this order shall deliver of the rolling stock purchased by him more or less than the portion of the same, either party, being dissatisfied therewith, may apply to this court for an order appointing disinterested persons to adjust and report to the court what the proper division of said rolling stock should be; it being made the duty of the receiver, by this order, to deliver such portion of the rolling stock purchased by him as, in his judgment, should be delivered to the Milwaukee and Minnesota Railroad Company under said order or orders of July 18, 1865, dividing to each party a just proportion both of locomotives and of cars, respectively, as near as may be.

And came the Milwaukee and St. Paul Railway Company by its solicitor and prayed an appeal from the order last above, and came the Milwaukee and Minnesota Railroad Company by its solicitor, and on its motion it is ordered by the court that the order last above in

relation to the delivery of rolling stock be, and the same is hereby, vacated.

JANUARY 9, 1866.

This day came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its bond to the United States in the penal sum of twenty-five thousand dollars, with Alexander Fleming, A. C. Gunnison, and Wm. R. Griffith as sureties therein, who each justify in the sum of fifty thousand dollars, and also filed its bond to Hans Crocker in the penal sum of twenty thousand dollars, with Alexander Fleming, A. C. Gunnison, and William R. Griffith as sureties, who each justify in the sum of forty thousand dollars, which bonds are as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., trustee, complt.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming, sureties, acknowledge themselves to be held and firmly bound unto the United States of America in the penal sum of twenty-five thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made said company and said sureties, hereby bind themselves, their successors, heirs, representatives, and assigns, firmly by these presents.

Dated, signed, sealed, and delivered this 29th day of December, A. D. 1865. Provided, however, and this bond is upon the condition following, that is to say, that if the said Milwaukee and Minnesota Railroad Company shall well and truly pay to Sebre Howard and Selah Chamberlain, or to the owner or owners of certain judgments heretofore recovered in the district court of the United States for the district of Wisconsin, or in any other court whatever, in favor of said Howard and said Chamberlain, or either of them, or both of them, against the La Crosse and Milwaukee Railroad Company, all such sums of money as may come into the hands of said Milwaukee and Minnesota Railroad Company, which shall hereafter be found to be rightly applicable to the payment of their claims, or the claim of either of them, if they shall be established as liens upon the railroad owned by the Milwaukee and Minnesota Railroad Company, being the railroad from Milwaukee to Portage, in the State of Wisconsin, according to the true intent and meaning of the order of this court made in this cause in this behalf, on the 18th day of July, A. D. 1865, then this bond to be void; otherwise, in full force and virtue.

8

Dated, signed, sealed, and delivered the day and year first above written.

The Milwaukee and Minnesota Railroad Company,
[CORPORATE SEAL.] By A. C. GUNNISON, *President.*
[SEAL.] WM. R. GRIFFITH.
[SEAL.] A. FLEMING.
[SEAL.] A. C. GUNNISON.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

William R. Griffith, Albert C. Gunnison, and Alexander Fleming, being duly sworn, on oath says, each for himself, that he is worth the sum of fifty thousand dollars over and above all liabilities and exemptions of property from sale on execution.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn to before me, this second day of January, A. D. 1866, as witness the seal.

[SEAL.] JOHN A. OSBORN,
U. S. Commissioner Southern District of New York.

[5-ct. in. rev. stamp, cancelled.]

9 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit of the United States of America, for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same as United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent rev. stamp, cancelled.]

Indorsed: District of Wisconsin, *ss:*

I hereby approve this bond and the sureties thereto, this 9th day of January, A. D. 1866.

A. SCOTT SLOAN,
Clerk U. S. Circuit, Dist. of Wis.

Filed January 9th, 1866.

Circuit of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., compl't,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming as sureties, are held and firmly bound unto Hans Crocker, receiver in the above-entitled cause, in the penal sum of twenty thousand dollars, for the payment of which, well and truly to be made the said company and said sureties, hereby bind themselves, their successors, heirs, and representatives, firmly by these presents. Signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, this bond is given upon the express condition, that if said Milwaukee and Minnesota Railroad Company shall well and truly, fully and entirely, indemnify the said Hans Crocker from and against all contingent liability mentioned in the report of H. L. Palmer, esq., auditor in this cause, and from all cost, expenses, and trouble in any and every way arising or resulting therefrom, then this bond shall be null and void; otherwise, of full force, virtue, and effect.

Signed, sealed, and delivered the day and year above written.

The Milwaukee and Minnesota Railroad Company—

[CORPORATE SEAL.] By A. C. GUNNISON, *President.*

[SEAL.] WM. R. GRIFFITH.
[SEAL.] A. FLEMING.
[SEAL.] A. C. GUNNISON.

UNITED STATES OF AMERICA,
Southern District of New York:

William R. Griffith, Albert C. Gunnison, and Alexander Fleming, being duly sworn, on oath says, each for himself, that he is worth the sum of forty thousand dollars over and above all liabilities and exemptions of property for sale on execution.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn to before me, this 2d day of January, A. D. 1866, as witness the seal.

[SEAL.] JOHN A. OSBORN,
U. S. Commissioner for the Southern District of New York.

[5-cent rev. stamp, cancelled.]

UNITED STATES OF AMERICA.
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second cir-

cuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a United States commissioner, duly appointed
11 by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent rev. stamp, cancelled.]

Indorsed: District of Wisconsin, *ss:*

I hereby approve this bond, this 9th day of January, A. D. 1866, and the sureties thereto.

A. SCOTT SLOAN,
Clerk U. S. Ct. Court, Dist. of Wis.

And come the Milwaukee and St. Paul Railway Company, the owner of the Chamberlain judgment, and F. P. James, the owner of the Howard judgment, and filed their exceptions to the bond and the sufficiency of the sureties, as follows, to wit:

U. S. circuit court, 9th circuit, and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMpany, and others.

And now comes the Milwaukee and St. Paul Railway Company, the owner of the Chamberlain judgment, and Fred. P. James, the owner of the Howard judgment, mentioned in the order of this circuit court of July 18, 1865, by John W. Cary, their solicitor, and excepts to the bond of the Milwaukee and Minnesota Railroad Company and the sureties thereto filed in pursuance of said order, to account for the net earnings of said railroad, and objects to the approval thereof by the clerk of this court—

1st. Because said sureties are not citizens or residents of the State and district of Wisconsin.

2d. Because said sureties are wholly irresponsible and unable to respond to the penalty of said bond. And the said Milwaukee and St. Paul Railway Company and said Fred. P. James hereby demand an oral examination and justification by said sureties on oath, before said bond shall be approved by the clerk of this court.

JOHN W. CARY,
12 *Solicitor for said M. & St. P. R'y Co. and Fred. P. James,*

Which are overruled and the bond approved.

JANUARY 10, 1866.

This day the clerk made and filed the following report, to wit:

Circuit court of the United States, district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company *et al.*

I certify that Russell Sage has presented for payment out of the moneys paid into court the following coupons, and that he is entitled to receive payment as follows, to wit:

On 149 bonds from which coupons were not detached, and which have the full number of 13 coupons, at $524 60 each	$78,165 40
On 805 bonds which have 11 complete coupons, the coupons of September, '59, and March, '60, being detached, at $439 21 each	353,564 05
On 36 coupons of September, '59, at $42 69²	1,537 02
On 36 coupons of March, '60, at $42 69²	1,537 02
On 5 coupons of September, '60, at $39 53	197 65
On 6 coupons of March '61, at $39 53	237 18
On 6 coupons of September, '61, at $39 53	237 18
On 6 coupons of March, '62, at $39 53	237 18
On 6 coupons of September, '62, at $39 53	237 18
On 6 coupons of March, 63, at $39 53	237 18
On 6 coupons of September, '63, at $39 53	237 18
On 6 coupons of March '64, at $39 53	237 18
On 6 coupons of September, '64, at $39 53	237 18
On 6 coupons of March '65, at $42 61	255 66
On 6 coupons of September, '65, at $40 95	245 70
Add for fractional differences	9 32
	437,409 26

And I further certify that after such payment and the cancellation of such coupons, there remain outstanding—

13	34 coupons of September, '59, at $42 69²	$1,451 63
	36 coupons of March, '60, at $42 69²	1,537 02
41	coupons of September, '60, at $39 53	1,620 73
40	coupons of March, '61, at $39 53	1,581 20
40	coupons of September, '61, at $39 53	1,581 20
40	coupons of March, 62, at $39 53	1,581 20
40	coupons of September, '62, at $39 53	1,581 20
40	coupons of March, '63, at $39 53	1,581 20
40	coupons of September, '63, at $39 53	1,581 20
40	coupons of March, '64, at $39 53	1,581 20

40 coupons of September, '64, at $39 53	$1,581 20
40 coupons of March, '65, at $42 41	1,696 40
40 coupons of September, '65, at $40 95	1,638 00
	20,593 38

RECAPITULATION.

Amount presented for payment	$437,399 94
Outstanding coupons	20,593 38
Interest on coupons paid by Milwaukee & St. Paul Railroad Company to receiver	4,055 16
	462,048 48
Amount paid into court	462,057 80
Difference	9 32

8 c. on every 100 coupons would make a difference of $9 15.

A. SCOTT SLOAN, *Clerk.*

Dated January 9, 1866.

JANUARY 10, 1866.

The clerk having made report of the several amounts payable on the coupons of the bonds, included in the record of this cause, out of the moneys paid into court by the Milwaukee & Minnesota Railroad Company, it is thereupon ordered that the said report be entered of record and filed.

It is ordered that of the said money paid into court there be paid to Russell Sage, the holder of coupons, according to said report, to the amount of four hundred and thirty-seven thousand four hundred and nine dollars and twenty-six cents, ($437,409 26,) the said
14 sum of four hundred and thirty-seven thousand four hundred and nine dollars and thirty-six cents, ($437,409 26.) It is further ordered that four thousand and fifty-five dollars and sixteen cents (4,055 16) be paid to the Milwaukee and St. Paul Railway Company, according to said report, for interest on coupons, to take the receipt of the president of said company for the same, and the check to be issued to Alexander Mitchell, the said president.

It is ordered that the remaining and outstanding coupons, amounting to twenty thousand five hundred and ninety-three dollars and thirty-eight cents ($20,593 38) be paid on presentation of the said several coupons as the same may be presented by the holders thereof, taking the receipt of such holder, and then entering the amount so paid, from time to time, in the money register. It is ordered that a separate receipt be taken of each and every person who may receive a check for money in pursuance of this order, and the said receipt be annexed to said check on its return from the depository.

A. G. MILLER,
District Judge.

And came Hans Crocker, by his solicitor, and filed his exceptions to the bond of the Milwaukee & Minnesota Railroad Company, as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Co. *et al.* } In chancery.

Hans Crocker now comes and excepts to the bond filed by the Milwaukee & Minnesota Company in this cause as not being drawn in compliance with the order of the court, and also because the sureties are non-residents and out of the jurisdiction of this court; and also because they are pecuniary irresponsible, and he gives notice that when the court shall again meet he will move for a new bond.

JAMES S. BROWN,
Att'y for Hans Crocker, Receiver.

JANUARY 31, 1866.

This day came the receiver and filed his report, and also filed statement of the operation of the eastern division for the month of December, 1865, as follows, to wit:

United States circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Co. *et al.*

To the judges of the circuit court of the United States of
15 America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of December, 1865.

H. CROCKER, *Rec.*

Balance on hand November 30, 1865		$86,087 56
Receipts, pay-roll ac. bal. on settlement		387 07
		86,474 63
Disbursements:		
Loss and damage	$98 76	
Operating expenses	51 00	
Legal expenses	845 53	
First mortgage coupons	2,936 20	
Milw. city coupons	75 25	
Balance on hand Dec. 31, 1865	82,467 89	
		86,474 63

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of December, 1865, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 20th day of January, A. D. 1866.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Statement of the operation of the eastern division, La C. and Milwaukee Railroad Co., for the month of December, 1865.

Earnings:	
From freight	$12,244 40
Passengers	7,626 55
Mails, rents, and miscellaneous	1,229 86
Total earnings	21,100 81
16 Expenses:	
Repairs of road	$2,665 67
Bridges	321 37
Fences	40 00
Buildings	499 75
Locomotives	1,120 92
Cars	1,636 66
Tolls and machinery	149 71
Operating:	
Management and general officers	1,290 69
Station service	2,204 63
Conductors, baggagemen, and brakemen	663 00
Train and station supplies	201 84
Engineers, firemen, and wipers	1,338 92
Oil and waste	415 45
Fuel	4,957 50
Loss and damage of freight and baggage	20 74
Miscellaneous expenses	5 87
Telegraph	2 88
Printing and advertising	177 71
Other expenses:	
Taxes, United States revenue	527 50
Renewal of track, new iron	11,336 57
Total expenses	29,577 38

RECAPITULATION.

Gross earnings	$21,100 81
Total expenses	29,577 38
Deficit	8,476 57

Auditor's Office, Milwaukee, January 31, 1866.

JAS. P. WHALING, *Auditor.*

PATTERSON, *February* 20, 1866.

This day came F. P. James, by his solicitor, Mr. Cary, and filed his petition for an order to apply the moneys in the hands of the receiver to the payment of the Howard and other judgments, as follows, to wit:

To Matt. H. Carpenter, esq., solicitor for Milwaukee and Minnesota R. R. Co.:

17 SIR: Please to take notice that on Monday, the 19th instant, at 10 o'clock a. m., I shall present the annexed petition of Frederick P. James to the Hon. Andrew G. Miller, district judge, and one of the judges of the circuit court of the United States for the district of Wisconsin, at his chambers in the city of Milwaukee, in said district of Wisconsin, and upon said petition ask said judge to grant the order prayed for in said petition.

Yours, &c.,

JOHN W. CARY,
Solicitor for Petitioner, Frederick P. James.

Dated February 14, 1866.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Alfred L. Cary, being duly sworn, deposes and says that on the 15th day of February, 1866, at the city of Milwaukee, in the State of Wisconsin, he served the within notice and annexed petition upon Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, by leaving copies thereof at the office of said Carpenter, in said city of Milwaukee, with his clerk therein, and at the time of such service said Carpenter was absent from his said office.

ALFRED L. CARY.

Sworn to before me, this 19th day of February, 1866.

R. SAGE, JR.,
Notary Public, Milw. Co., Wis.

18 To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

Your petitioner, Frederick P. James, a citizen and resident of the city and State of New York, humbly complaining, respectfully represents:

That the La Crosse and Milwaukee Railroad Company, defendant, is a corporation, chartered by the State of Wisconsin, and duly or,

ganized under its charter, by which, among other things, it
19 was duly authorized to build and construct a railroad from the city of Milwaukee to the city of La Crosse, and that during the years from 1853 to 1858, inclusive, said La Crosse and Milwaukee Railroad Company built and constructed said road from the city of Milwaukee to the city of La Crosse.

That the Milwaukee & Minnesota Railroad Company claims to be a corporation, organized under and by virtue of the laws of the State of Wisconsin.

That on the 12th day of June, 1858, the Mercantile Bank, a corporation duly organized, and doing business under the laws of the State of Connecticut, in a suit prosecuted by it against the said La Crosse and Milwaukee Railroad Company, in the circuit court in and for the county of Milwaukee, by the consideration and judgment of said court recovered against said La Crosse and Milwaukee Railroad Company the sum of twenty five thousand seven hundred and ninety-four dollars and fifty-four cents, damages and costs, which judgment was duly docketed on that day so as to become a lien upon all the real estate owned by the said La Crosse and Milwaukee Railroad Company in the State of Wisconsin.

20 That said judgment still remains in full force, unreversed and unsatisfied, and that there is now actually due thereon from said defendant, La Crosse and Milwaukee Railroad Company, the sum of twenty-five thousand seven hundred and ninety-four dollars and fifty-four cents, together with interest thereon from June 12, 1858.

That on the 1st day of May, in the year 1858, one Sebre Howard, in a suit prosecuted by him against the said La Crosse and Milwaukee Railroad Company, in the circuit court for Milwaukee county, by the consideration and judgment of said court recovered against said La Crosse and Milwaukee Railroad Company a judgment for twenty-five thousand five hundred and eighty six dollars and seventy-eight cents, for damages and costs, which said judgment was on the same day docketed, so as to become a lien on all the real estate of said La Crosse and Milwaukee Railroad Company in the State of Wisconsin; that afterwards, on the 29th day of October, A. D. 1858, an execution on said judgment was issued out of and under the seal of said circuit court, directed to the sheriff of Milwaukee county, commanding him to levy the amount thereof out of the goods and chattels, lands and tenements of the said La Crosse and Milwaukee Railroad Company. And that afterwards, and on the 18th day of March, A. D. 1859, said sheriff returned said execution, with his return thereon indorsed, by which said return it appeared that the said sheriff had made, by a sale of certain real estate, the sum of eleven thous-
21 and four hundred and thirty-eight forty one-hundreths dollars on said execution and that he could not find any other property, goods or chattels, lands or tenements, belonging to said defendant, La Crosse and Milwaukee Railroad Company, whereof to make the remainder of said execution, or any part of it, and, therefore, that he returned the same unsatisfied as to the residue. That

said judgment still remains in full force, unreversed, unsatisfied, and unpaid, except as to the said sum so made on the said execution, and that there is now actually due thereon the sum of fifteen thousand seven hundred and thirty dollars and forty-nine cents, together with interest from the 18th day of March, A. D. 1859.

That on the 7th day of October, 1857, one Newcomb Cleveland, a citizen of the State of Illinois, in a suit prosecuted by him against the said La Crosse and Milwaukee Railroad Company, in the district court of the United States for the district of Wisconsin, by the consideration and judgment of said court, recovered against said defendant, La Crosse and Milwaukee Railroad Company, the sum of one hundred and eleven thousand seven hundred and twenty-seven dollars and seventy-one cents damages, and five hundred and fourty-four dollars and fifteen cents costs, which judgment was duly docketed on that day in the clerk's office of said court, so as to become a lien on all the real estate owned by said defendant, La Crosse and Milwaukee Railroad Company, within the State of Wisconsin.

That said judgment still remains in full force, unreversed, and unsatisfied, except that the following sums have been paid thereon by Hans Crocker, receiver of said La Crosse and Milwaukee Railroad Company, on the orders of said district court made for that purpose, to wit:

April 22, 1861, the sum of	$28,801 92
June 29, 1861, the sum of	10,000 00
July 18, 1861, the sum of	20,000 00
November 28, 1862, the sum of	15,000 00

22 And that there is now actually due thereon from the said defendant, La Crosse and Milwaukee Railroad Company, the sum of $76,493 31-100, together with interest thereon from the 28th day of November, A. D. 1862.

That each and all of said judgments have been assigned and transferred by the several owners thereof to said plaintiff, and that he is now the lawful holder and owner of each and every one of said judgments, and fully authorized to collect the same, and receive the amount due on each and all of said judgments.

That said La Crosse and Milwaukee Railroad Company is utterly and hopelessly insolvent, and has no property or means of payment of any kind or description, except the railroad and rolling stock thereon, so as aforesaid constructed by said company from Milwaukee to La Crosse, and upon which the said several judgments became liens at the time of the docketing of the same, respectively as above set forth.

That, as this plaintiff is informed and believes, said railroad, rolling stock, fixtures, and franchises and privileges of said company are not liable to sale on execution, and that the only way in which the lien of said judgments on said property can be enforced is by invoking the equitable powers of this honorable court, and that the plaintiff is remediless at and by the strict rules of the common law.

That on the —— day ——, 1859, the said Sebre Howard brought

an action on the judgment, so as aforesaid recovered by him in the circuit court of Milwaukee county, in the district court of the United States for the district of Wisconsin, and recovered thereon a judgment in the district court on the 28th day of November, 1859, and that afterwards such proceedings were had in said district court on said judgment that said Sebre Howard filed his bill on the equity side of said district court the 5th day of January, 1860, in the nature of a creditor's bill against said La Crosse company and Selah Chamberlain to enforce the payment of said judgment, and such proceedings were therein had, that on the 9th day of June, 1860, an order was made therein by said district court appointing Hans Crocker receiver of said La Crosse and Milwaukee railroad, its appurtenances, property, and rolling stock, and that on the 11th day of June, 1860, said Crocker took possession thereof as such receiver.

That the lein of said judgments as to all that part of said road lying west of Portage City, being one hundred and five miles thereof, has been barred and foreclosed, by reason of a foreclosure and sale under a certain mortgage given by said La Crosse and Milwaukee Railroad Company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, which said mortgage bore date and became a lien on said road on the 31st day of December, 1856, and was
23 given to secure four million dollars in amount of bonds issued by said La Crosse and Milwaukee Railroad Company, and covered all that portion of said railroad lying between Portage City and La Crosse. That said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, on the 5th day of December, 1859, filed their bill of complaint on the equity side of the district court of the United States for the district of Wisconsin, which court had full jurisdiction of the subject-matter, against said La Crosse and Milwaukee Railroad Company and others, to foreclose said mortgage; and that afterwards such proceedings were therein had that on the 13th day of January, 1862, a final decree was entered in said cause, directing a sale of said mortgaged premises, and forever foreclosing and barring said La Crosse and Milwaukee Railroad Company, and all persons claiming under them subsequent to said mortgage, from all right and equity of redemption in said mortgaged premises. That afterwards, and on the 25th day of April, A. D. 1863, in pursuance of said decree, said premises were sold by the marshal of said district, which sale was afterwards confirmed by the court. That on such sale, William Wallace Pratt and William H. White became the purchasers thereof, and afterwards, in pursuance of the laws of the State of Wisconsin, organized the Milwaukee and St. Paul Railway Company, and thereupon conveyed said premises, so by them purchased, to said corporation so formed, and that said corporation it now the owner thereof, and in the possession and enjoyment of the same.

That the remainder of the railroad of the said La Crosse and Milwaukee Railroad Company, being that part between the city of Milwaukee and Portage City, commonly known as the east division of said railroad, a distance of ninety-five miles, and its proceeds is the only property out of which said plaintiff can hope to realize the

amount of said judgments; and that said portion of said railroad is encumbered by the following mortgage liens all of which are
24 prior to said lien of said judgments of this plaintiff, to wit: a mortgage given by said La Crosse and Milwaukee Railroad Company to Francis A. Palmer, to secure nine hundred and fifty thousand dollars in amount of eight per cent. bonds of said company, of which bonds eight hundred and eighty-six thousand dollars in amount are now outstanding and secured by said mortgage; a mortgage given by the Milwaukee, Fond du Lac, and Green Bay Railroad Company to the city of Milwaukee, to secure the payment of two hundred thousand dollars of city bonds loaned to said road, (which last company was consolidated with the La Crosse and Milwaukee Railroad Company,) all of which bonds are now outstanding and unpaid; a mortgage given to the city of Milwaukee by the La Crosse and Milwaukee Railroad Company, to secure one hundred and fourteen thousand dollars, in city bonds, loaned to said road by said city, all of which bonds are now outstanding and unpaid; a mortgage bearing date August 17, 1857, given by the La Crosse and Milwaukee Railroad Company to Greene C. Bronson and James T. Soutter, to secure one million dollars of eight per cent. bonds, issued by said company, upon which last mortgage four hundred thousand dollars of interest is now past due and unpaid.

That said Greene C. Bronson and James T. Soutter, on the 9th day of December, 1869, filed their bill on the equity side of the district court of the United States for the district of Wisconsin, against said La Crosse and Milwaukee Railroad Company, the Milwaukee and Minnesota Railroad Company, and others, to foreclose said mortgage, so as aforesaid given to them, and that such proceedings were therein had that on the 6th day of July, 1860, Hans Crocker, so being receiver as aforesaid in the case of Sebre Howard, was appointed receiver in that suit of the said La Crosse and Milwaukee Railroad Company, from Milwaukee to Portage City, and that ever since said 11th day of June said Hans Crocker has been acting as such receiver, operating the said railroad and receiving the
25 revenue, tolls, and income thereof.

That the said mortgages above described embraced and were and are a lien upon all of the property, real and personal, of the said La Crosse and Milwaukee Railroad Company, except such part as passed to the Milwaukee and St. Paul Railroad Company by reason of said purchase under foreclosure sale of said mortgage to Bronson, Soutter, and Knapp, of said western division of said railroad.

26 That, as he is informed and believes, on the 21st day of June, A. D. 1858, the said La Crosse and Milwaukee Railroad Company executed to one William Barnes, as trustee, a mortgage on the whole of said railroad from Milwaukee to La Crosse to secure two million dollars in amount of bonds; that some bonds were issued under said mortgage, but to what amount the plaintiff in uninformed; that afterwards, and on the 11th day of August, A. D. 1858, a supplemental mortgage was executed by said La Crosse and Milwaukee Railroad Company to said Barnes; that afterwards, and on or about

the first day of February, 1859, the said William Barnes, claiming to act by virtue of the power contained in said mortgage and supplemental mortgage, caused said mortgaged premises to be advertised for sale in a public newspaper in the city of Milwaukee, and afterwards, and on the 21st day of May, 1859, at the court-house in Milwaukee, offered the same for sale pursuant to said notice, at public vendue, and pretended to sell said mortgaged premises to himself, and thereby claimed that he had become the owner thereof in trust for the bondholders, and that thereby said mortgage was foreclosed, and that within one year from that time the equity of redemption
27 of the La Crosse and Milwaukee Railroad Company would be entirely barred and foreclosed unless it was redeemed from said sale; that after said sale some of the bondholders under said mortgage pretended to form a corporation under and by the virtue of the laws of the State of Wisconsin by the name of the Milwaukee and Minnesota Railroad Company; that after the pretended formation of said company, said Barnes pretended to convey to them the premises so purchased by him at said sale, and that thereupon said company so formed claimed to be a corporation duly organized; that it had succeeded to all the rights, privileges, franchises, and property which were of the La Crosse and Milwaukee Railroad Company on the 21st day of June, A. D. 1858, and that it was the owner of the equity of redemption of the premises so as aforesaid mortgaged to said Barnes.

That said pretended Milwaukee and Minnesota Railroad Company have never had possession or control of said mortgaged property or premises, or any part or portion thereof, until the 9th day of January, 1866, and that whatever may be the rights acquired by said pretended Milwaukee and Minnesota Railroad Company by virtue of said
28 mortgage, said foreclosure sale and purchase, and the formation of said pretended corporation, to said mortgaged property, they are subject and inferior to the lien, claim, and right of this plaintiff by virtue of the lien of the judgments so as aforesaid recovered against said La Crosse and Milwaukee Railroad Company.

That, as your petitioner is informed and believes, the whole amount due for interest and costs and expenses on said Bronson and Soutter mortgage was, on the 4th day of January, 1856, fully paid and satisfied by the said Milwaukee and Minnesota Railroad Company, and that there is nothing now due on either of the mortgages above mentioned, and that, on the 9th day of January, 1866, said receiver, in pursuance of the orders of the court, surrendered to said Milwaukee and Minnesota Railroad Company the whole of said railroad, its appurtenances and rolling stock; that there is now in the hands of said receiver a large amount of money arising from the operation of said railroad by said receiver, which is properly applicable and should be applied to the payment of liens and encumbrances on said railroad subsequent and inferior to said Bronson and Soutter mortgage, and prior to the right and interest of said Milwaukee and Minnesota Railroad Company.

29 That there is nothing due on any of the liens or encum-

brances on said road which are prior in lien to said Bronson and Soutter mortgage so as aforesaid executed on the 17th day of August, 1857, and that the only claim or encumbrance thereon so subsequent to said Bronson and Soutter mortgage and prior and superior to these judgments of your petitioner above set forth is the mortgage lease and judgment of Selah Chamberlain, mentioned and set forth in said foreclosure suit of Bronson and Soutter, and which are now owned by the Milwaukee and St. Paul Railway Company, and that said last-named company consents to waive its priority of payment on said claim in favor of your petitioner's said judgments, so far as the funds
30 now in the hands of the receiver are concerned, and your petitioner therefore insists that his claim and equity upon said fund is prior and superior to any other claim thereto.

Your petitioner, therefore, asks that an order may be made by this honorable court directing the payment of the said judgments so belonging to your petitioner out of the fund now in the receiver's hands, according to their priority, together with the costs of this application, and that said receiver may be restrained from disposing of the same in any other manner until your petitioner's said judgments are fully paid, and your petitioner will ever pray, &c.

FREDERICK P. JAMES,
By JOHN W. CARY, *Sol'r.*
JOHN. W. CARY.
Solicitor and of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered that, on the 14th day of February, 1866, personally appeared before me, John W. Cary, and made oath that he is the attorney of Frederick P. James, the petitioner named in the foregoing petition; that the said James is a resident of the city and State of New York, and is not at this time within this district; that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the the matters therein stated upon the information and belief of said petitioner, and as to those matters he believes it to be true.

FRANCIS BLOODGOOD,
Circuit Court Com'r, Dist. Wis.

31 And came the Milwaukee and Minnesota Railroad Company, by Mr. Carpenter, its solicitor, and filed its answer to said petition as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

In the matter of the petition of Frederick P. James, noticed for hearing February 19, 1866, before Hon. Andrew G. Miller, one of the judges of said court.

The Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, as to the said petition of Frederick P. James, says:

1. that said petition should be dismissed, for that it is not entitled in any cause pending in said court; nor is such a bill as can become the foundation of any proceedings in this court.

2. The said petition should be dismissed, for that it is not addressed to said court, nor noticed by hearing in said court; but is noticed for hearing before a judge, and such judge cannot grant any such petition, or make any such order out of court as is prayed for in said petition.

The Milwaukee and Minnesota Railroad Company, saving all benefit of objection and exception to said petition above named, or that can be taken or had thereto, answering the same, says:

That the La Crosse and Milwaukee Railroad Company was, from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages, to aid said company in the construction and equipment of its said railroad; which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part, with and to said farmers, to pay the interest that might accrue thereon, and that a large sum of said interest, which said company was bound to pay as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "All and singular the

railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of land which then were or thereafter might be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be a part of, or appertain to, said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether then made or built or to be built and made thereafter; and all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad."

And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described, and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office the secretary of state of the State of Wisconsin; and as the plaintiff says, on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

That on the 11th day of August, A. D. 1858, the said com-
32 pany made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: All and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin, in said supplemental mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action, of whatsoever nature which might be owned, or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal or any part thereof, which might thereafter become due on any of the said

bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused said supplemental mortgage to be recorded, as, in the same offices as the said first named deed of trust or mortgage to said Barnes, was recorded as hereinbefore set forth; a copy of which said first mortgage, or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are attached hereto, and marked respectively Exhibit No. 1 and Exhibit No. 2.

That immediately thereafter said company commenced to deliver the said last-named bonds so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes, and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for, said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona fide purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned. That about the 1st of February A. D. 1859, the said company having made default in the payment of, or part of, the interest due on said bonds secured as aforesaid; the said William Barnes, in pursuance of the provisions of the laws of the State of Wisconsin then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage, to him, said Barnes, described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said State of Wisconsin, then in force in that behalf, at, and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33;) no other person or body having made any bid whatever for the same, and that said mortgages thus became and were thereby foreclosed according to the provisions of the laws of the State of Wisconsin in that behalf then in force. And that said Barnes, by virtue of said purchase, and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises, and other things so pur-

chased by him, and thereafter held the same in trust, and only in trust for the holders of the then outstanding bonds, secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became, and ever since have continued a corporation under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

That said bondholders at said new organization elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz:

Russell Sage, N. J. Emmons, Hans Crocker, William E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and —— Battershall, and that said directors immediately thereafter organized the said board of directors, by electing and choosing Russell Sage, president, N. J. Emmons, vice president, and Dwight W. Keyes, secretary of said Milwaukee and Minnesota Railroad Company; and that neither the La Crosse and Milwaukee Railroad Company nor any subsequent encumbrancer or encumbrancers, nor any other person or persons did, within one year after the said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf.

That by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company, and conveyance by said Barnes, as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description, before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and encumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said

La Crosse and Milwaukee Railroad Company and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors; and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company, which is apparently a lien or encumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described or intended to be embraced or described in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated; and has the right to collect and enforce all actions, and causes of action existing in favor of said La Crosse and Milwaukee Railroad Company, and conveyed by said trust deeds t said Barnes or either of them.

33 The said Milwaukee and Minnesota Railroad Company, further answering, on information and belief, says that it is true, and it admits the rendition of the several judgments mentioned in said petition in favor of the Mercantile Bank, Sebre Howard, and Newcomb Cleveland, as stated in said petition; but who now owns said judgments, or either of them, it has no knowledge or information sufficient to form a belief.

This defendant, further answering, says it is advised, as stated in said petition, that the "said railroad, rolling stock, fixtures, and franchises, and privileges of said company, are not liable to sale on execution; and, further answering, says that it is advised by counsel that neither of the judgments mentioned in said petition was ever a lien upon any part of the railroad franchises, or rolling stock, or appurtenances ever owned by the La Crosse and Milwaukee Railroad Company, and now owned by this repliant; that prior to the time when the said railroad, appurtenances, rolling stock, and franchises passed to and became vested in this repliant, as hereinbefore stated, no decree in equity, or final decree or proceedings for sequestration under the statute of Wisconsin had been obtained or had charging either of said judgments as liens upon said railroad, appurtenances, rolling stock, or franchises mentioned as aforesaid, nor charging the same, or either of them, as liens upon the revenues arising therefrom, or making any appropriation of the earnings thereof in favor of either of said judgments; but that on the contrary thereof the said railroad, appurtenances, rolling stock, and franchises passed to and became vested in this repliant, as hereinbefore stated, unencumbered by any lien of either of said judgments; and that by the foreclosure of the said mortgages to Barnes, as hereinbefore stated, and the vesting of the property in this repliant as aforesaid, it became and was impossible for the owner or owners of either of said judgments, by any proceedings whatever at law or in equity, to make or fix the same a lien upon

the said railroad, appurtenances, rolling stock, or franchises, or upon the revenues subsequently arising therefrom.

This repliant further says that all the money in the hands of the receiver mentioned in the said petition is money arising from the operation of the railroad, rolling stock, and franchises subsequent to the time when the same became vested in this repliant, as hereinbefore stated, unencumbered by any lien or charge of either of said judgments; and that the owner or owners of said judgments never had any lien by virtue of said judgments respectively upon said
34 property prior to its becoming vested in this repliant, and have no lien whatever now upon the revenues arising from the operation of said property subsequent to its being vested in this repliant.

This repliant, further answering, says that in the said suit in favor of the said Bronson & Soutter, mentioned in said petition, the said Sebre Howard was made a party defendant to the said bill of complaint in that cause, and your repliant was also a party defendant therein; that the said Howard appeared and answered said bill in that cause, and set up the said judgment rendered in his favor mentioned in said petition; and that after the final decree of the district court of the United States for this district in said cause the same was carried by appeal to the Supreme Court of the United States, and on hearing in said Supreme Court, the said Supreme Court decided, adjudged, and determined, and delivered its opinion that the said Howard judgment never was a lien upon any part of said railroad and property, and decided that the said Howard had no interest whatever in the mortgaged premises in said cause by virtue of said judgment; and this repliant says that said judgment, decree, and opinion of said Supreme Court remain in full force, not reversed or set aside; that the same rendered and delivered while said Howard was the owner of said judgment in said cause, in which both said Howard and this repliant were parties; and this repliant insists upon said adjudication and opinion of said Supreme Court as a conclusive bar by way of estoppel to the said petition, so far as regards the Howard judgment.

This repliant further says that in the said suit last above mentioned, in which said adjudication and opinion of said Supreme Court were made and delivered, this repliant, Sebre Howard, Newcomb Cleveland, the Mercantile Bank, and others were parties defendants, and that the said adjudication and opinion of said Supreme Court in said cause is therefore conclusive in all respects as between this repliant and the said Frederick P. James, the assignee of said parties respectively by assignment subsequent to the commencement of said suit; and this repliant further says that the said Supreme Court further decreed, adjudicated, and delivered its opinion in said cause, that the said railroad and other property became vested in your repliant by virtue of the said foreclosure of said Barnes's mortgages and subsequent conveyance to this repliant as hereinbefore stated, in the year 1859, when said purchase and conveyance were had and made; and this repliant claims the benefit of the same as conclusive

by way of estoppel between this repliant and the said James in the matter of his said petition.

The Milwaukee and Minnesota Railroad Company—

[L. S.] By A. FLEMING, *Vice President.*

MATT. H. CARPENTER,
Solicitor for the Milwaukee and Minnesota Railroad Company.

35 *Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between tho La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA, *State of Wisconsin:*

No. ——— $———

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of dollars, which sum it agress to pay to the bearer hereof on the first day of July, in the year of onr Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation of delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the

said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this , 185 .

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm, unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute, or be a part of, or appertain to, said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been, or may hereafter be, procured for, or used in connection with, said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these

presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already ac-
36 quired together with all the rights, liberties, privilege, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to liens already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah, to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of fifteen days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or pur-

chasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of. in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal, equitable, as said railroad company now has, or may hereafter acquire, of, in, or to, all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs charges, expenses, and compensation of the trustee, in, about, or fo the execution of the trust, and will in all things keep him fully in-

demnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars, with such sum as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding
37 bonds secured by this deed of trust, at the lowest price he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its presi-

dent and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company,
[SEAL] By N. P. STANTON, *President.*
LOCKWOOD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed and delivered in our presence as to the La Crosse and Wilwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.
J. C. CARY.

Signed, executed, and delivered, in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING.
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany:*

Be it remembered that, on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument, as president as aforesaid, freely for the purposes therein stated, and I certify that the said person, who made the said acknowledgment, is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written. Given under my hand and and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

38

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me, personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company for the uses and purposes therein mentioned; and the said Lockwood L. Doty being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8, 1858, at 8 o'clock a. m.

39 *Exhibit No. 2.*

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part:

Whereas the Congress of the United States, by an act approved June 3, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior, and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold, and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be, and the same are hereby, reserved to the United States from the

operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following: that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster General shall have the power to determine the same.

Approved June 3, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3, 1856," the people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to

Bayfield, and shall have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built or to be built thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act; and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract, in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads, which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies, as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connection with the same, shall at any time not be able to agree upon the terms of such connections, then, and in that case, either party may apply to the circuit court of the circuit in which such connection may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connection shall exist, and the said award of terms of connection shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice, in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which, by this act, the said La Crosse and Milwaukee Railroad

Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said lands shall vest in said company, and so from time to time until said roads are completed, and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress, hereinbefore mentioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and

completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of
41 the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed as may be law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of the said company and other persons; and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or

other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad; and said lands, granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other watercraft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other watercraft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to contruct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has, previous to the passage of this act, actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company, upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company, whose property or rights of property shall be thus taken, injured, or destroyed what-

ever the same is reasonably worth; such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person; and the
42 three persons so selected shall constitute a board of commissioners, whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act and all grants herein contained shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof as is in this act provided, is hereby declared to be taken for public use, so soon as said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital; and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two millions of dollars, the same shall be reduced to that amount by deducting such sums as may be necessary, pro rata, from each of

the several subscriptions; and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall, from time to time, operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall, immediately after the passage thereof, be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state;

And whereas the said railroad company for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined, before the date of the indenture hereinafter mentioned, dated June 21, 1858, between said company of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached;

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear;

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to
43 La Crosse, a distance of about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given, to said La Crosse and Milwaukee Railroad Company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands and real estate, which now constitute or may hereafter constitute, or be a part of or appertain to said railroad, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made, or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad or other bonds, bills, of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees. and assigns, to warrant and forever defend the above described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges and franchises above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations,

lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, termsand conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period 44 shall be made in the payment at muturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in. and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder

or holders of bonds the nontstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president

and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse & Milwaukey Railroad Company—

[L. S.] By N. P. STANTON, *President.*

LOCKWOOD L. DOTY, *Secretary.*

[L. S.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed, and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president.

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence as to Lockwood L. Doty, secretary to said La Crosse & Milwaukee Railroad Company.

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence as to William Barnes, the said trustee.

JOHN G. WHITE.
ISAAC EDWARDS.

45 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me personally appeared Nehemiah P. Stanton, described in, and who executed the above instrument in writing, as the president of, and in behalf of, the La Crosse & Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse & Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. , Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING.
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me personally appeared Lock-

wood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing, as secretary of, and in behalf of, the LaCrosse & Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse & Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty being by me duly sworn, says that he is the secretary of the La Crosse & Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. , Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse & Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. 71, State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

46 FEBRUARY 27, 1866.

This day came the receiver and filed his report, and also filed statement of the operation of the eastern division for the month of January, 1866, as follows, to wit:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE & MILWAUKEE R. R. Co.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1866.

H. CROCKER, *Rec.*

Balance on hand December 31, 1865	$82,467 89
Receipts:	
Mil'w. and St. Paul R'way Co., 2d mortg'e coupons, $62,400; cash, $40	62,440 00
	144,907 89
Disbursements:	
Operating ac	$229 00
Expenses foreclosure 2d mortg'e	17,796 36
Legal expenses	91 75
1st mortgage coupons	666 66
Milw. city coupons	33 33
2d mortg'e coupons	62,400 00
Bal. on hand Jan'y 31, 1866	63,690 79
	144,907 89

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of January, 1866, according to his best knowledge, information, and belief.

HANS CROCKER.

Subscribed and sworn to before me, this 26th day of February, A. D. 1866.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

47 *Statement of the operation of the eastern division La Crosse and Milwaukee Railroad Co., for the 9 days ending January 9, 1866.*

Earnings:	
From freight	$3,797 14
Passengers	1,854 96
Mails, rents, and miscellaneous	527 92
Total earnings	6,180 02
Repairs:	
Of road	$160 90
Bridges	21 10
Locomotives	247 64
Cars	60 45
Tools and machinery	6 39
Operating:	
Management and general officers	386 77
Station service	638 89
Stationery, printing, and adv't'g	15 05
Conductors, baggagemen, and brakemen	239 00
Train and station supplies	3 00
Engineers, firemen, and wipers	632 22
Oil and waste	226 32
Fuel	1,260 00
Loss and damage of freight and baggage	17 80
Telegraph	12 78
Other expenses:	
Taxes, U. S. revenue	146 12
	4,074 43

RECAPITULATION.

Gross earnings	$6,180 02
Total expenses	4,074 43
Net earnings	2,105 59

J. P. WHALING, *Auditor.*

Auditor's office, Milwaukee, Feb. 26, 1866.

48 MARCH 31, 1866.

This day came the receiver and filed his report for the month of February, 1866, as follows, to wit:

U. S. circuit court, Wisconsin.

JAMES T. SOUTTER, surviving trustee,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

To the judges of the circuit court of the United States of America for the district of Wisconsin:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1866.

H. CROCKER, *Rec'r.*

Balance on hand January 31, 1866	$63,690 79
Receipts, none.	
Disbursements:	
Operating expenses	$32 25
Encumbrances E. div.	221 14
First mortgage coupons	153 59
Mil'w. city coupons	391 30
Bal. Feb. 28, 1866	62,892 51
	63,690 79

STATE OF WISCONSIN, *Milw. County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee r'road for the month of February, 1866, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 30th day of March, A. D. 1866.

W. L. HINSDALE,
Notary Public for Milw. Co., Wis.

APRIL 9, 1866.

This day came the complainant by his counsel, and filed his petition for an order of sale, as follows, to wit:

49 Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The petition of the complainant by Thomas L. Ogden, his solicitor, shows to the court that a decree of this court in this suit was duly

made on the twenty-seventh day of September, A. D. 1864, by which, among other things, it was ordered and adjudged that after the expiration of one year from the date of the said decree, the complainant should be at liberty, when further instalments of interest should be due and unpaid, to apply for an order for the sale of the mortgaged premises, as directed by and in accordance with the mandate of the Supreme Court. That an instalment of interest on the bonds and mortgage set forth in the complaint fell due on the first day of March, A. D. 1866, and that no part thereof has been paid. That the said instalment of interest in the aggregate on all the bonds amounted to the sum of forty thousand dollars, which said sum and interest thereon from the said first day of March, 1866, remains due and unpaid to the several bondholders. Your petitioner therefore prays that the usual order may be made for the sale of the mortgaged premises in accordance with the said decree and the mandate of the Supreme Court, and for such other or further relief as may be just. And your petitioner will ever pray, &c.

THOMAS L. OGDEN,
Sol. for Compl't.

DISTRICT OF WISCONSIN, *ss:*

Alexander Mitchell being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true as he verily believes; that this affiant is the holder of some of the bonds secured by the mortgage to foreclose which this suit was instituted, and that since the first day of March, 1866, he caused a demand of payment of the coupons which fell due on the said first day of March to be made of the Milwaukee and Minnesota Railroad Company at their office in the city of Milwaukee. and payment thereof was refused; and that, as he has been informed and verily believes, demand of payment on some of the said coupons was made at the National Bank of the Republic in the city of New York, at which place the said coupons by their terms are payable, since the said
50 first day of March, and that payment thereof was refused. This affiant further states that the complainant, the trustee for the bondholders, is not within this State, but is somewhere in Europe, as this affiant is informed and verily believes.

ALX. MITCHELL.

Sworn to and subscribed before me, this 6th day of April, A D. 1866.

JAMES McFARLIN.
U. S. Com'r, Dist. of Wis.

APRIL 11, 1866.

This day came the Milwaukee & Minnesota Railroad Company, by its solicitor. and filed its motion and papers for an attachment against the directors of the Milwaukee and St. Paul Railway Company, and for the sequestration of their stock, as follows, to wit:

51 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to the said circuit, and the Hon. Andrew G. Miller, district judge. On the twentieth day of the term, to wit, on the 18th day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

On motion of Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause:

Ordered, that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated, as now appears, to be as follows, viz: Amount fixed by order or decree nisi, $405,290 05, together with interest thereon since September 27, 1864; coupons due March 1, 1865, $40,000, with interest thereon since that date; coupons to become due September 1, 1865, $40,000, with interest thereon from that date; expenses, counsel fees, etc., allowed at $35,796 33, with interest thereon from this day.

52 Ordered further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court, for the complainant in this cause, the several sums above mentioned, with interest thereon as aforesaid to the day of such payment and the costs in this cause to be taxed; that upon such payment the said receiver, Hans Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as $121,178 bears to $26,199, together with all the rights, privileges, and franchises and personal and other prop-

erty belonging or in any wise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged, except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee and Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute, and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebra Howard and Selah Chamberlain, or the owners of said judgments, or either of them, all such sums as may come into the hands of said company,
53 which shall hereafter be found to be rightly applicable to the payment of their claims, if they shall be established as liens upon said road; and that said company execute its bond to Hans Crocker in the sum of twenty thousand dollars, with sufficient surety, to indemnify him for contingent liability mentioned in the report of the auditor in this cause.

Ordered further, that said Howard or Chamberlain may, at any time hereafter, apply to the court for an additional bond if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned to be approved by the clerk of this court.

Ordered further, that if the said Milwaukee and St. Paul Railway Company shall pay over the sum in its hands, or any part thereof, as this day ordered, the said Milwaukee and Minnesota Railroad Company shall only be required to pay to the clerk of this court the balance of the amount so due said complainant at the date of payment by said last-named company, over such sums so paid by said Milwaukee and St. Paul Railway Company, and said Milwaukee and Minnesota Railroad Company shall be entitled to possession as hereinbefore mentioned, upon payment of such balance and giving bonds as hereinbefore ordered.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES F. SOUTTER, survivor, &c., trustee, complainant,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as principal, and William R. Griffith, Albert
54 C. Gunnison, and Alexander Fleming, sureties, acknowledge themselves to be held and firmly bound unto the United States of America, in the penal sum of twenty-five thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, said company and said sureties hereby bind themselves, their successors, heirs, representatives, and assigns, firmly by these presents.

Dated, signed, sealed, and delivered, this 29th day of December, A. D. 1865.

Provided, however, and this bond is upon the condition following, that is to say: That if the said Milwaukee and Minnesota Railroad Company shall well and truly pay to Sebre Howard and Selah Chamberlain, or to the owner or owners of certain judgments heretofore recovered in the district court of the United States for the district of Wisconsin, or in any other court whatever, in favor of said Howard and said Chamberlain, or either of them, or both of them, against the La Crosse and Milwaukee Railroad Company, all such sums of money as may come into the hands of said Milwaukee and Minnesota Railroad Company, which shall hereafter be found to be rightly applicable to the payment of their claims, or the claim of either of them, if they shall be established as liens upon the railroad owned by the Milwaukee and Minnesota Railroad Company, being the railroad from Milwaukee to Portage, in the State of Wisconsin, according to the true intent and meaning of the order of this court, made in this cause in this behalf on the 18th day of July, A. D. 1865, then this bond to be void, otherwise in full force and virtue.

Dated, signed, sealed, and delivered the day and year first above written.

The Milwaukee and Minnesota R. R. Co.,

[L. S.] By A. GUNNISON, *President.*
[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. S.] A. C. GUNNISON.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

William R. Griffith, Albert C. Gunnison, and Alexander
55 Fleming, being duly sworn on oath, says, each for himself, that he is worth the sum of fifty thousand dollars over and above all liabilities and exemptions of property from sale on executions.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn to before me, this second day of January, A. D. 1866, as witness the seal.

(Signed) JOHN A. OSBORN, [L. S.]
U. S. Comm'r, Southern District of New York.

[5-ct. int. rev. stamp, cancelled.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

5-ct. int. rev. stamp, cancelled]

DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond and the sureties thereto, this 9th day of January, A. D. 1866.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. Wis.

56 Circuit court of the the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c., complainant,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents that the Milwaukee and Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming, as sureties, are held and firmly bound unto Hans Crocker, receiver in the above-entitled cause, in the penal sum of twenty thousand dollars, for the payment of which, well and truly to be made, the said company and said sureties hereby bind themselves, their successors, heirs, and representatives, firmly by these presents.

Signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, this bond is given upon the express condition that if said Milwaukee and Minnesota Railroad Company shall well and truly, fully and entirely, indemnify the said Hans Crocker from and against all contingent liability mentioned in the report of H. L. Palmer, esq., auditor in this cause, and from all cost, expenses, and trouble in any and every way arising or resulting therefrom, then this bond shall be null and void, otherwise of full force, virtue, and effect.

Signed, sealed, and delivered the day and year above written.
The Milwaukee and Minnesota R. R. Co.,
[L. S.] By A. C. GUNNISON, *President.*
[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. S.] A. C. GUNNISON.

57 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William R. Griffith, Albert C. Gunnison, and Alexander Fleming

being duly sworn, on oath says, each for himself, that he is worth the sum of forty thousand dollars over and above all liabilities and exemptions of property for sale on execution.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn before me, this second day of January, A. D. 1866, as witness the seal.

[L. S.] JOHN A. OSBORN,
U. S. Comm'r for the Southern Dist. of N. Y.

[5-ct. R. S., canc'd.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, this second day of January, in the year of Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct. R. S., canc'd.]

58 DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond this 9th day of January, A. D. 1866, and the sureties hereto.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. of Wis.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States for the district of Wisconsin, hereby certify that the above and foregoing are true copies of an order made by said court, on the day and in the cause on which it purports to have been made, and of two bonds filed this day by the Milwaukee and Minnesota Railroad Company in my office, and duly approved by me this day.

I further certify that the Milwaukee and Minnesota Railroad Company has paid to me, in lawful money of the United States, the full amount, together with all interest, costs, and expenses, as provided by said order to entitle that company to the possession of the railroad, rolling stock, and other things mentioned in said order in that behalf.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court at Milwaukee, this 26th day of January, A. D. 1866, and of the independence of the United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

[5-ct. R. S can'd.]

59 OFFICE OF THE RECEIVER OF THE
LA CROSSE AND MILWAUKEE R. R. CO.,
Milwaukee, Jan. 19th, 1866.

To whom it may concern:

I have this day, by order of the circuit court of the United States for the district of Wisconsin, delivered possession of the so-called eastern division of this road to the Milwaukee and Minnesota Railroad Company.

All operating expenses, since the 9th inst., will be paid by said company.

H. CROCKER, *Receiver, &c.*

At a meeting of the directors of the Milwaukee and Minnesota Railroad Company, held December 30th, 1865:

On motion of Thomas A. Scott, it was

Resolved, That Alexander Fleming, vice president of this company, be authorized and empowered in the name of this company, to demand and receive from Hans Crocker, receiver of the circuit court of the United States for the district of Wisconsin, in equity in certain causes therein pending, and from the Milwaukee and St. Paul Railway Company, possession of the railroad and rolling stock, and all other things belonging to the Milwaukee and Minnesota Railroad Company.

I certify that the foregoing is a true copy from the minutes of the company.

[SEAL.] HENRY M. ALEXANDER, *President.*

60 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, the Milwaukee and Minnesota Railroad Company, and others.

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, and each and every one of them, and to Alexander Mitchell, president of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rogers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, S. W.

'Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Phillips, James Kindling, Uriah Reynolds, Scott Dimick, Henry More, D. W. Heading, C. Renous, D. Willey, E. Crippen, James Little, sr., H. Sage, S. Ellis, M. Coffin, S. Anderson, L. M. Follett, F. Toucey, A. Peck, J. Morrison, S. Sleeper, W. F. Fuller, M. Farrar, O. Hutchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittredge, George Huntington, L. B. Abott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm. Bloomfield, Frank Keiting, J. Johnson, Wm. Caton, O. Warriner, George Thompson, P. Plumb, C. E. Page, J. Sargent, M. Kelley, G. Gould, E. Fox, W. McCurdy, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosh, Wm. Ferguson, George Howard, A. Jones, A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chad-
61 wick, P. New, C. Maggatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fischback, George Wells, J. Mackey, A. C. Kenniston, ——— Hall, William Cosgrove, D. M. Christy, please take notice that the papers herewith served are certified copies of a certain order of said court, in the above-entitled cause, and copies of the two bonds, duly approved by the clerk of said court, which have been filed in the office of said clerk, in this cause, by the Milwaukee & Minnesota Railroad Company, and in pursuance of and in compliance with said order; and also a copy of a paper executed by Hans Crocker, esq., receiver of said court; and also a copy of a resolution of the board of directors of the Milwaukee & Minnesota Railroad Company, empowering Alexander Fleming, vice president of said company, to receive the property mentioned in said order.

You will further take notice that the said Milwaukee & Minnesota Railroad Company now and hereby demands that you deliver to the said Fleming possession of any and all of the rolling stock and other property mentioned in said order, now in your possession or under your control, or in the possession or under the control of each, any, and every one of you, according to the exigency, direction and command of said order.

You and each of you will further take notice that for any failure on your part, or on the part of any one or more of you, to comply with the terms of said order and this demand, you, and each and every one of you, will be proceeded against for contempt of said court;
62 and that each and every one of you will be held liable severally and individually for the value of any property in your hands, and for damages for detaining the same and otherwise.

Dated February 10, 1866.

The Milwaukee Minnesota R. R. Co.—

By ALEXANDER FLEMING, *Vice President.*

MATT. H. CARPENTER, *Solicitor.*

63 Correspondence between the Milwaukee and Minnesota Railroad Co., and the Milwaukee and St. Paul Railway Co. as to the refusal of the latter company to deliver possession of rolling stock, under order of the United States circuit court.

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
Milwaukee, January 29, 1866.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the eastern division of said La Crosse and Milwaukee railroad.

64 The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division, or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the receiver, to wit: three (3) locomotives and a large of cars. One of the locomotives is now at Portage, subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs; two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof, subject to future review and correction by the court, or by the agreement of parties interested; and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in, or control over, the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 11th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was as to said property discharged; since which time this company has been

in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession. Whenever the court shall have disposed of the questions there raised, and settled the title and ownership of said stock, we shall cheerfully conform to its decision.

In the mean time we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom; we shall
65 therefore furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage, and freight cars, which are now in your possession; and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said original stock, an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly in our possession and under our control, and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully yours,

S. S. MERRILL,
General Manager.

MILWAUKEE, *January* 31, 1866.

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, and each and every one of them, and to Alexander Mitchel, president of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rogers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, J. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Philipps, James Kindling, C. Rerous, D. Wiley, E. Crippen, James Little, jr., H. Sage, J. Ellis, M. Coffin, J. Anderson, A. Peck, S. Sleeper, M. Farrar, O. Huchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittredge, George Huntington,
66 L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm. Bloomfield, Frank Keiting, J. Johnson, Wm. Caton, O. Warriner, Geo. Thompson, P. Plumb, C. P. Page, J. Sargeant, M. Kelley, G.

Gould, E. Fox, W. McCurday, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosh, Wm. Ferguson, Geo. Howard, A. Jones, A Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chadwick, P. New, C. Magatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fischback, George Wells, J. Mackey, A. C. Keniston, ——— Hall, D. M. Christy, W. P. Cosgrave :

GENTLEMEN: In reply to the demand heretofore made on you by the Milwaukee and Minnesota Railroad Company, that you and each and every of you comply with a certain order of court therein named, the Milwaukee and Minnesota Railroad Company has just received a letter from S. S. Merrill, manager of the Milwaukee and St. Paul company, of which the foregoing is a copy.

As to the rolling stock purchased by the receiver, this company has requested the receiver to proceed at once and deliver to this company such proportion thereof as it is entitled to under the order of the court, and will attend said receiver at any time and place to be named by him to receive the same.

As to the rolling stock on the La Crosse and Milwaukee railroad when the receiver was appointed, except the forty box cars, the letter of your manager just received informs this company you do not intend to deliver it.

It is not supposed that your counsel need any instruction upon this subject, nor is it expected that this letter will produce any practical result, if you are disposed to resist the authority of the court. But being instructed by the Minnesota company to take the proper steps to hold the officers, directors, and agents of the St. Paul company liable personally for the consequences of this contempt of the court; and as many of those officers are gentlemen with whom I have always been on friendly relations socially, I have resolved to lay be-
67 fore them the facts in the case as they appear of record; and then if they choose to disobey the order of the court, the consequences will be upon them.

The eastern division of the road was first mortgaged, and the mortgage conveyed the road from Milwaukee to Portage, together with the rolling stock and franchises pertaining thereto between the limits aforesaid; but did not specify the amount of rolling stock intended to be conveyed by the mortgage.

The western division was mortgaged in the same way.

Subsequently the whole road, and all its rolling stock, property, and franchises were mortgaged to Barnes, and on the foreclosure of that mortgage in May, 1859, passed to the Milwaukee and Minnesota company. This has been so decided by the Supreme Court of the United States.—(2 Wallace 304.) Thereby the Minnesota company became the successor of the old La Crosse company, and the owner of the road, property, and franchises, subject to prior legal liens.

Subsequently a suit was commenced in the United States court to foreclose the western division mortgage, and another was afterwards

commenced in the same court to foreclose a mortgage on the western division. As each of these suits was distinct from the other, and each was commenced to foreclose a particular mortgage, one of which mortgages covered the eastern division with its rolling stock, and the other the western division with its rolling stock, and as neither mortgage specified how much of the whole rolling stock was covered by it, of course it was necessary for the court to ascertain this by proceedings to that end.

For that purpose the court made an order of reference in each of these cases, among other things as follows:

WESTERN DIV. CAUSE.

"And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage, and also in the first and second mortgages respectively."

EASTERN DIV. CAUSE.

"And it is further ordered by the court that the said masters ascertain and report the whole amount of rolling stock on the whole road, and that they specify the quantity thereof that is covered by and included in the first mortgage, and also in this mortgage and the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp."

The masters made their report as follows:

WESTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling
68 stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred and sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand and six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount to $623,235 78.

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased by the proceeds of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and

James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857."—(Record, 72.)

EASTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling stock on the whole road. The amount thereof, at the cost price, was, at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents. And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road six hundred twenty-three thousand two hundred and thirty-five dollars and seventy-eight cents, ($623,235 78.)

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, ($31,979 64,) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and no other. And all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the complainants' mortgage specified in the bill of complaint."—(Record, 90.)

This report, which gave to the western division but forty box cars, was excepted to by Mr. Carey for the complainants in that cause, upon the ground that it ought to have given all; and was excepted to by Mr. Jas. S. Brown, in the eastern division cause, because it ought not to have given the western division any of the rolling stock, not even the forty box cars. But the court overruled all these exceptions and made its decree in the western division cause for the sale of that division and said forty cars.

The complainants in the western division cause proceeded to execute the decree by a sale, and the Milwaukee and St. Paul company claims to have become the purchaser of what was sold at that sale. This is the title and the only title of that company to any part of the road or franchises of the old La Crosse company.

69 The premises of the eastern division mortgage, viz: the road from Milwaukee to Portage, and all the rolling stock, except the forty box cars, was, of course, in no way affected by the sale of the western division and the forty cars.

At the July session, 1865, of the United States court, an order was made on a mandate from the Supreme Court of the United States, among other things, as follows:

"On motion of Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause.—

"Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated as now appears to be as follows, viz:

"Amount fixed by order of decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

"Ordered farther, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid, to the day of such payment and the costs in this cause to be taxed, that upon such payment the said receiver, Hans Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges, and franchises, and personal and other property belonging or in anywise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts."

This order has been fully complied with by the Minnesota company, nearly half a million of dollars have been paid into court, bonds have been filed, approved, and the Minnesota company thereupon
70 became entitled to possession under the order, and the receiver has actually surrendered the eastern division.

The Minnesota company thereupon served upon your company a certified copy of the order, the bonds filed, and a certificate of the clerk of the court that the order had been fully complied with and notice of the surrender of the eastern division by the receiver; and demanded of your company, and of its officers, directors, and agents, by name, a surrender of the rolling stock under the order of the court.

The letter before me is understood to be the refusal of your company to comply with that order.

The reason you assign is that you claim to be the owner, not only of the forty box cars sold to you at the foreclosure sale, but also of the rolling stock which the court adjudged was not covered by your

James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857."—(Record, 72.)

EASTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling stock on the whole road. The amount thereof, at the cost price, was, at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents. And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road six hundred twenty-three thousand two hundred and thirty-five dollars and seventy-eight cents, ($623,235 78.)

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, ($31,979 64,) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and no other. And all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the complainants' mortgage specified in the bill of complaint."—(Record, 90.)

This report, which gave to the western division but forty box cars, was excepted to by Mr. Carey for the complainants in that cause, upon the ground that it ought to have given all; and was excepted to by Mr. Jas. S. Brown, in the eastern division cause, because it ought not to have given the western division any of the rolling stock, not even the forty box cars. But the court overruled all these exceptions and made its decree in the western division cause for the sale of that division and said forty cars.

The complainants in the western division cause proceeded to execute the decree by a sale, and the Milwaukee and St. Paul company claims to have become the purchaser of what was sold at that sale. This is the title and the only title of that company to any part of the road or franchises of the old La Crosse company.

69 The premises of the eastern division mortgage, viz: the road from Milwaukee to Portage, and all the rolling stock, except the forty box cars, was, of course, in no way affected by the sale of the western division and the forty cars.

At the July session, 1865, of the United States court, an order was made on a mandate from the Supreme Court of the United States, among other things, as follows:

"On motion of Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause.—

"Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated as now appears to be as follows, viz:

"Amount fixed by order of decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

"Ordered farther, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid, to the day of such payment and the costs in this cause to be taxed, that upon such payment the said receiver, Hans Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges, and franchises, and personal and other property belonging or in anywise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts."

This order has been fully complied with by the Minnesota company, nearly half a million of dollars have been paid into court, bonds have been filed, approved, and the Minnesota company thereupon
70 became entitled to possession under the order, and the receiver has actually surrendered the eastern division.

The Minnesota company thereupon served upon your company a certified copy of the order, the bonds filed, and a certificate of the clerk of the court that the order had been fully complied with and notice of the surrender of the eastern division by the receiver; and demanded of your company, and of its officers, directors, and agents, by name, a surrender of the rolling stock under the order of the court.

The letter before me is understood to be the refusal of your company to comply with that order.

The reason you assign is that you claim to be the owner, not only of the forty box cars sold to you at the foreclosure sale, but also of the rolling stock which the court adjudged was not covered by your

mortgage, and refused to sell to you; and you assert that the court delivered possession of this rolling stock to you as purchaser under the western division foreclosure sale.

To show you how unfounded is this claim, and how untrue is the basis upon which it rests, I ask your attention to the facts as they appear of record.

I have already shown you that for the purpose of ascertaining what rolling stock was covered by the land grant mortgage, in other words, belonged to the western division, the court made an order of reference, the masters reported only forty box cars, your counsel excepted to the report on that ground, and the court overruled the exception; and that the decree directed the sale of the forty box cars only. The order under which you obtained possession as purchaser was as follows:

"Whereupon it is ordered by the court (Mr. Carpenter in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of William Crawshay and Orville Oddie objecting) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

"And it is further ordered by the court that a full and perfect inventory be taken by the receiver of all the rolling stock other than the forty box cars specially mentioned in the decree; and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as have been procured by the receiver and now on hand; and that he make report of the same on the eighth day of June next.

71 "And as in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the court, (reserving the right to rescind, change, or modify this order at any time hereafter,) that the said Milwaukee and St. Paul Railway Company and the receiver who continues to be the receiver of the eastern end or division of said La Crosse and Milwaukee railroad, between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company, and the said receiver, jointly, employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company may keep duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue and to be charged with its proportion of disbursements, and that the said receiver pay coupons of bonds on prior mortgages as heretofore."

You will see from reading this order, that, as purchaser, you ob-

tained possession of only the rolling stock and property specially mentioned in the decree, that is, the forty box cars.

But for the purpose of keeping the road entire as it was chartered, the receiver and your company was authorized to operate the whole road, including the eastern division and all the rolling stock except the forty cars, jointly.

Afterwards, on the 12th June, the court, for the purpose of more completely securing the operation of the whole road, as an entire, continuous road under the charter, made two orders as follows:

WESTERN DIVISION CAUSE.

"On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Co. all and singular the railroad between the city of La Crosse and Portage City, its road bed and track, with its depots, station-houses, engine-houses, and all the other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

"And also the share or proportion of the rolling stock and
72 property purchased by the receiver, as mentioned in the decree.

"And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court. And it is further ordered by the court, that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed."

EASTERN DIVISION CAUSE.

After reciting the petition of the St. Paul Co., &c., &c.:

"It is thereupon ordered by the court that the order appointing a receiver in this case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: That the receiver let the said Milwaukee and St. Paul Railway Co. into the possession of the eastern division of the La Crosse and Milwaukee railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging. And that the said Milwaukee and St. Paul Railway Co., subject to further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof, so that one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Co.,

without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

"And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road; and that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad. And that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

"And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States, for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management
73 of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues of said road according to this order."

The order in the western division cause deserves particular attention. It orders the receiver:

(1.) To deliver to the St. Paul company full possession of the western division; "and the forty box cars mentioned and described in the decree."

(2.) To deliver also full possession of the "share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree;" thus terminating the joint occupancy with the receiver with which that possession had been burdened by the order of May 7.

So far the order is absolute, and shows by the repetition of the words at the end of each clause, "mentioned and described in the decree," that the court was delivering possession of what the St. Paul company had acquired title to by its purchase under the decree.

Then the order proceeds to direct the receiver to deliver also, subject however to all "other or previous liens or claims," the whole rolling stock on hand when he was appointed, that is, the remainder of the rolling stock except the forty box cars, which belonged to the eastern division, and of course was not mentioned and described in the land grant decree, therefore this clause is not followed, as the others were, by the words, "mentioned and described in the decree."

Considering the careful and guarded language of this order, it is impossible not to see that the court was drawing the distinction, in what it ordered to be delivered to the St. Paul company, between that which belonged to them by their purchase under the decree; that is, the western division, the forty box cars, and the proportion of rolling stock purchased by the receiver; and that which was delivered to them temporarily, but not by virtue of their purchase under the decree.

The court in substance said—"take absolutely all that was purchased by you under the decree—the western division, forty
74 box cars, and the proportion of rolling stock purchased by the receiver; this you have purchased. The remainder of the said rolling stock has been ascertained to belong to the eastern division, and it must there remain; but we give it, with the eastern division, into your possession temporarily, that the whole may be operated together."

2. Turn now to the order in the eastern division cause. The court had decided that all the rolling stock, except forty box cars, was included in the eastern division first mortgage: that is, that it belonged to the railroad between the limits of Milwaukee and Portage; because such is the description in that mortgage. The court had determined, for reasons of public policy, etc., set forth in the preamble to this order, to give to the St. Paul company the possession of the eastern division mortgage premises temporarily. This order gives to the St. Paul company the possession of the eastern division "and rolling stock thereto belonging," but subject nevertheless "to any further or other order, rescinding, altering, or modifying this order now here made."

How absurd to pretend that the court in this order regarded the rolling stock pertaining to the eastern division as having been purchased by the St. Paul company. Did a court ever yet put a purchaser into possession after the final decree and confirmation of sale, "subject to any further order rescinding" the same? This right reserved to the court to rescind the order giving the St. Paul company the eastern division "and the rolling stock belonging thereto," is conclusive that the court was granting to that company a favor and not a right; a temporary possession, not a title.

Under these orders, and as a condition to obtaining possession of the eastern division and its rolling stock, your company gave a bond, as follows, which will probably become matter of interest to its signers at no very distant day:

Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William H. White, George W. Rodgers, Selah Chamberlain, and Asahel Finch, as sureties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its assigns, or any party interested herein, to which payment, well and truly to be made to the said obligee, the said obligors bind themselves, their heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals, and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order, bearing date on the twelfth day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, property, and rolling stock belonging thereto, and directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to operate said eastern division of said railroad in connection with the western division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board.

Now, therefore, if the said Milwaukee and St. Paul Railway Com-

pany shall faithfully comply with said order of said court, and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and
76 the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Company—by its president:

[SEAL.]	D. M. HUGHES, *President.*
[SEAL.]	D. M. HUGHES.
[SEAL.]	AL'X MITCHELL.
[SEAL.]	GEO. W. ROGERS.
[SEAL.]	F. P. JAMES.
[SEAL.]	N. A. COWDRY.
[SEAL.]	RUSSELL SAGE.
[SEAL.]	SELAH CHAMBERLAIN.
[SEAL.]	HORACE GALPIN.
[SEAL.]	W. H. WHITE.
[SEAL.]	A. FINCH.

Signed, sealed, and delivered in presence of—
JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

JUNE 13, 1863.

This bond and the sureties approved by the court.

A. G. MILLER.

It was under these orders and this bond that you took possession of the rolling stock in question, really as receiver of the court in the eastern division cause, for the purpose of operating the La Crosse road as a continuous line, without diversion of travel or business from the eastern division at Portage.

In this connection, let me call your attention to extracts from two opinions of the court, explaining the reason why the order was made giving you possession:

"The only legitimate question before the court in June last, when the order modifying the action of the receiver was made, and now is, how is the road to be operated, during the pendency of the appeal, as an entire road under the grant of the charter, to the best interests of the parties, the creditors, and the public? It was conceded that the use of the road could not to be obstructed at Portage City, but that the cars must be run through the whole length of the road. * * * * This order was intended to prevent a diversion of the travel and business on the western division from the eastern, and to save the expense to two sets of employees, and to prevent interruption of the public."

And again the judge says, in another opinion:

Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William H. White, George W. Rodgers, Selah Chamberlain, and Asahel Finch, as sureties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its assigns, or any party interested herein, to which payment, well and truly to be made to the said obligee, the said obligors bind themselves, their heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals, and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order, bearing date on the twelfth day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, property, and rolling stock belonging thereto, and directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to operate said eastern division of said railroad in connection with the western division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board.

Now, therefore, if the said Milwaukee and St. Paul Railway Com-

pany shall faithfully comply with said order of said court, and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and
76 the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Company—by its president:

[SEAL.]	D. M. HUGHES, *President.*
[SEAL.]	D. M. HUGHES.
[SEAL.]	AL'X MITCHELL.
[SEAL.]	GEO. W. ROGERS.
[SEAL.]	F. P. JAMES.
[SEAL.]	N. A. COWDRY.
[SEAL.]	RUSSELL SAGE.
[SEAL.]	SELAH CHAMBERLAIN.
[SEAL.]	HORACE GALPIN.
[SEAL.]	W. H. WHITE.
[SEAL.]	A. FINCH.

Signed, sealed, and delivered in presence of—
JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

JUNE 13, 1863.

This bond and the sureties approved by the court.
A. G. MILLER.

It was under these orders and this bond that you took possession of the rolling stock in question, really as receiver of the court in the eastern division cause, for the purpose of operating the La Crosse road as a continuous line, without diversion of travel or business from the eastern division at Portage.

In this connection, let me call your attention to extracts from two opinions of the court, explaining the reason why the order was made giving you possession:

"The only legitimate question before the court in June last, when the order modifying the action of the receiver was made, and now is, how is the road to be operated, during the pendency of the appeal, as an entire road under the grant of the charter, to the best interests of the parties, the creditors, and the public? It was conceded that the use of the road could not to be obstructed at Portage City, but that the cars must be run through the whole length of the road. * * * * This order was intended to prevent a diversion of the travel and business on the western division from the eastern, and to save the expense to two sets of employees, and to prevent interruption of the public."

And again the judge says, in another opinion:

"The first duty of the court is to secure the interests of the public under the grant of the charter to the La Crosse company.
77 The second duty is to protect the rights of the lien creditors and the parties litigant. The receiver was appointed for these two purposes.

"For this purpose the orders of the 12th June, 1863, in this case and in the Howard case, modifying the original orders appointing the receiver, were made. The Milwaukee and St. Paul company were allowed by those last orders to operate temporarily the eastern division of the road in connection with the western division, of which they were owners, for the sake of economy in operating the road, to secure the use of all the rolling stock on the whole line, and to restrain the St. Paul company from diverting trade and travel from the eastern division. It was known that the St. Paul company were about to connect their division from Portage City to the Watertown road, and thence to Milwaukee, which might affect the eastern division.

"The order allowing that company to operate the eastern division, subject to the control of the court and the supervision of the receiver, and under heavy bonds with adequate security, prohibiting them from putting a car on their extension from Portage or on any other road east of that point, I considered it a proper duty for the public and the parties to secure the use of a continuous route according to the charter, without interruption or deviation of trade or travel between the termini of the road."

You will judge for yourself how faithfully you have executed the spirit of the orders giving you possession of our property, and what are the chances of your liability in your bond.

In the same connection, let me also remind you of a decision of the Supreme Court of the United States upon this very subject, reported in 2 Wallace, 609, in which the court, after an examination of the mortgages and a review of the foregoing orders, decide:

1. That the land grant mortgage did not cover the rolling stock belonging to the eastern division; and

2. If it had done so, the decree of the court, under which alone you can claim title, ordered the sale of only the forty box cars. It was after this decision of the Supreme Court of the United States, and in pursuance of a mandate from that court that the circuit court ordered you to deliver up this rolling stock to our company on payment of the money, &c., which you now refuse to do.

This decision also sets at rest the pretence now repeated by you, in the letter before me, that you received possession of this rolling stock as purchaser. The court say, 2 Wallace, p. 240:

"On the 7th day of May, two days after the order of confirmation, the Milwaukee and St. Paul Railway Company presented their petition for the discharge of the receiver, and for possession of the
78 property which they had purchased. The court thereupon made an order 'that the receiver deliver over to said Milwaukee and St. Paul Railway Company the said road and appurtenances between Portage City and La Crosse, and the rolling stock

and property specially described in the decree.' The only rolling stock specially described in the decree was the forty box cars, and the proportion of stock purchased by the receiver. The fact that this was ordered to be delivered to the purchasers, and no more, is almost conclusive of two things: first, that the judge understood his decree and previous rulings as we have interpreted them; and second, that he had no idea that he had confirmed a sale of all the rolling stock on the road to the purchasers at the sale. It is true that over a month later he ordered the eastern division of the road and the remainder of the rolling stock into the possession of the same company. But this was done to enable them to run the whole road as a through route, on the principle of public policy, and that it was better for all parties concerned. This he declared in an opinion delivered at the time, and it is substantially indicated in the orders."

I understand you derive great consolation from the fact that three of the judges dissented from that decision.

But on examining the dissenting opinion you will find that it in no way sustains your pretence of title. The majority of the court held that this rolling stock belonged, in severalty, not to you but to us; while the minority held that it did not belong to either of us, in severalty, but ought to be operated on the whole road for the benefit of both of us, and all concerned.

Two months after the order of the court requiring your company to deliver to us this rolling stock, as part of the eastern division, and after the decision of the Supreme Court of the United States above referred to, your counsel, Mr. John W. Carey, assisted Mr. Ogden to obtain a decree in the eastern division suit for the sale of the mortgage premises in that cause; and that decree directs the sale of this rolling stock in the precise language of description employed in the order, as belonging to the eastern division. Under this decree the eastern division and this rolling stock were advertised for sale, and only saved by the payment by our company of near half a million of dollars as required by that decree.

This shows that your own counsel, Mr. Carey, regards this rolling stock as covered by the mortgage, which only describes rolling stock appurtenant to the eastern division, because he knew that the Supreme Court of the United States had decided, in the above-
79 mentioned suit between your company and ours, that the mortgage on the western division, under which alone you can claim, did not cover the rolling stock belonging to the eastern division. The language of the court, (2 Wallace, 635,) speaking of mortgages on the eastern and western divisions, respectively, is: "But when we consider it [the descriptive part of the mortgages] in reference to the clear purpose of the parties to make the mortgages distinct and different as to every thing else conveyed by them, we conclude that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the road."

From this you will see that Mr. Carey is blowing hot and cold on this question with a vengeance. In the eastern division cause, he

claims and obtains a decree for the sale of all this rolling stock as part of the eastern division; but since that sale has been prevented, by our paying the money, he claims that this rolling stock belongs to the western division, not to the eastern.

This is not at all surprising after the former proceedings of your company. Mr. Carey, as your counsel, once obtained possession of the eastern division and this rolling stock, for the purpose of carrying out the "public policy of the State," to keep this a continuous line. You now not only seek to defeat this end, but Mr. Carey has signed an opinion denying the power of the legislature to prevent your doing so.

The Milwaukee and Minnesota Railroad Company, if it hears nothing further from you, will understand the foregoing letter of your manager as a refusal on the part of the Milwaukee and St. Paul Railway Company to obey the order of the court; and you, and each and every one of you, will be held responsible, not only in your corporate, but in your individual capacity, for damages.

Your letter, by way of adding insult to injury, offers to furnish us sufficient rolling stock to do our business. There is nothing in your past dealings with, or present relations towards, our company that can induce us to believe that you would be willing to do us any favor. This offer is therefore regarded as only an evidence that you know and feel that you are acting in a most high handed and illegal manner in disobeying the order of the court, and are only desirous of diminishing the damages you know we must ultimately recover against you.

You will please take notice that we demand of you a complete and full performance of the order of the court in this behalf, and
80 do not wish to hire, or rent, borrow, or use, any rolling stock, except that which the order requires you to deliver, and that, and all of it, we claim and demand to be immediately delivered.

In this connection I may say, that the whole rolling stock the order entitles us to is necessary to do the business of our company; and we are desirous of receiving the same immediately, for the purpose of putting it in repair before the commencement of the spring business.

You will therefore please take notice that the Milwaukee and Minnesota Railroad Company demands an immediate compliance with said order, on the part of the Milwaukee and St. Paul Railway Company, and its directors, officers, agents, and employees, and especially of each and every of you to whom this is directed it demands such compliance.

MATT. H. CARPENTER,
Solicitor of the Mil. and Minn. R. R. Co.

The Milwaukee and Minnesota R. R. Co., by—
A. FLEMING,
Vice President.

81 Circuit court of the United States, for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others. } In equity.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Nicholas Murray, being first duly sworn, says that at the city and State of New York he served the foregoing documents hereto attached upon the following named persons at the date respectively set opposite their names, by delivering to and leaving with each of them a copy of said documents, and exhibited then and there to each of said persons the said originals hereto attached at the time and as part of said service, viz:

February 14th, 1866, Russell Sage.
" " " D. M. Hughes.
" " " N. A. Cowdrey.
" " " F. P. James.
" 15th, " Washington Hunt.
" 16th, " Horace Galpin.
March 5th, " W. S. Gurnee.

NICHOLAS MURRAY.

Sworn before me this 21st day of March, 1866.
[SEAL.] FREDERICK BULL,
Notary Public, 58 *Wall st.*

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE & MILWAUKEE Railroad Company and others, defendants. } In equity.

82 DISTRICT OF WISCONSIN, *ss:*

William J. C. Forster, being first duly sworn, on oath says that at Milwaukee, in said district, on the 29th day of January, A. D. 1866, he served on the Milwaukee & St. Paul Railroad Company a duplicate of the foregoing printed and written document marked "A," certified under the seal of said court, and stamped with a United States revenue stamp, as the foregoing document "A" is stamped, by delivering the same to and leaving the same with Alanson Cary, secretary of said Milwaukee & St. Paul Railway Company, in his said secretary's office, in said Milwaukee, and that he served said document "A" upon the persons named below, at the dates respectively set opposite their names, by delivering to and leaving with each of them, at Milwaukee, in said district, a true copy thereof, and ex-

hibiting to each of them at time of such service, the said original document marked "A," duly certified and stamped as aforesaid, viz:

January 30th, 1866, A. Reasoner, superintendent of said Milwaukee and St. Paul Railway Company.

January 30th, 1866, John W. Cary.

January 30th, 1866, Daniel Wells, jr.

January 27th, 1866, Robert Grace and J. Jones, who were then in possession of engine No. 26, mentioned in said order.

January 29th, 1866, J. A. Smith.

January 29th, 1866, Alexander Mitchell, president of said Milwaukee and St. Paul Railway Company.

January 26th, 1866, James Little, jr., and O. Blanchard, who were then in possession of engine No. 6, mentioned in said order.

January 30th, 1866, Asahel Finck, jr.

January 30th, 1866, S. S. Merrill, manager of said last-named company.

January 27th, 1866, Daniel Willey and W. McCauley, who were then in possession of engine No. 4, mentioned in said order.

And further says that the said persons who were at the time of such service in possession of said engines were in such possession as employees of the Milwaukee and St. Paul Railway Company.

This affiant further says that afterwards, at Milwaukee, in said district, he served a copy of the foregoing printed document marked "B" upon the persons named below, at the dates respectively set opposite their names.

83 February 5th, 1866, on S. S. Merrill.
February 5th, 1866, on Alexander Mitchell.
February 5th, 1866, on John W. Cary.
February 5th, 1866, on A. Finch, jr.
February 5th, 1866, on Alanson Cary, secretary.
February 5th, 1866, on A. Reasoner, superintendent.
February 10th, 1866, on Daniel Wells, jr.

This affiant further says that the printed documents mentioned in this affidavit are those which are prefixed to the affidavit of Nicholas Murray.

WILLIAM J. C. FORSTER.

Subscribed and sworn to before me, this 7th day of April, A. D. 1866.

JAMES McFARLIN,
U. S. Commissioner, District of Wisconsin.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE Railroad Company and others. } In equity.

DISTRICT OF WISCONSIN, *ss:*

Erastus A. Patterson, being first duly sworn, on oath says that he is now auditor of the Milwaukee and Minnesota Railroad Company,

and that ever since the 1st day of May, A. D. 1862, up to February 1st, 1866, he had been in the employment of the Milwaukee and St. Paul Railway Company.

He further says that when the receiver took possession of the La Crosse and Milwaukee railroad in this district, on the 11th day of June, 1860, the rolling stock on said road was as follows, exclusive of the forty box cars mentioned in the final order or decree of sale in this cause, viz:

Twenty-three locomotives, numbered from one to 21, inclusive, and and number 26 to 27, inclusive.

Seventeen first-class passenger cars, numbered from one to four inclusive, and from six to eighteen, inclusive.

84 Nine second-class and baggage cars, numbered from 1 to 9, inclusive.

Three mail and express cars, numbered from one to three, inclusive.

Six caboose cars, numbered from 1 to six, inclusive.

One hundred eighty-two box freight cars, numbered even numbers from 2 to 328, inclusive, and from 410 to 444, inclusive.

One hundred and twenty platform cars, numbered odd numbers from 1 to 239, inclusive.

Forty-eight hand cars.

Six rubble cars.

Four wood cars.

Two snow ploughs.

This affiant further says that the rolling stock purchased and built by the receiver while in possession of said road, prior to the final decree or order of sale in this cause, was as follows: viz:

Eight locomotives, numbered 22 to 25, inclusive, and numbered 28 to 31 inclusive.

Two passenger cars, numbered 19 and 20, inclusive.

Two hundred and twenty-eight box freight cars, numbered even numbers from 446 to 900, inclusive.

One wrecking and pile-driving car.

That since the demand made by the Milwaukee and Minnesota Railroad Company on the said receiver, Hans Crocker, and the Milwaukee and St. Paul Railway Company, in January last, for possession of that portion of said rolling stock to which said Milwaukee and Minnesota Railroad Company is or claims to be entitled under the orders and decrees in this cause, said receiver and said Milwaukee and St. Paul Railway Company have delivered to the Milwaukee and Minnesota Railroad Company the following rolling stock, viz:

Fourteen locomotives, numbered 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29, and 30.

Eight passengers cars, numbered 1, 7, 13, 15, 17, 18, 19, 20.

Four baggage cars, numbered, 1, 4, 6, and 7.

Three mail and express cars, numbered 1, 2, and 3.

Four caboose cars, numbered 2, 5, 102, and 170.

Eighteen platform cars, numbered 151, 143, 93, 161, 101, 109, 137, 119, 83, 23, 117, 77, 149, 97, 121, 151, 3, and 223.

One hundred and fifty box cars, numbered 84, 154, 60, 36,

85 10, 134, 138, 6, 242, 202, 292, 242, 390, 318, 328, 456, 496, 494, 492, 446, 478, 452, 480, 466, 458, 450, 482, 408, 468, 548, 566, 556, 592, 512, 546, 506, 514, 524, 574, 588, 562, 516, 564, 560, 568, 534, 572, 576, 584, 590, 580, 554, 582, 552, 558, 586, 598, 670, 626, 622, 686, 688, 628, 656, 654, 616, 682, 646, 676, 620, 610, 642, 608, 630, 606, 666, 698, 696, 690, 614, 602, 658, 674, 696, 624, 662, 660, 684, 650, 678, 618, 600, 672, 664, 626, 730, 760, 712, 766, 756, 798, 710, 790, 774, 762, 782, 704, 740, 796, 722, 716, 754, 758, 742, 768, 738, 724, 776, 750, 708, 700, 748, 718, 702, 720, 746, 786, 752, 824, 810, 800, 850, 818, 874, 858, 842, 804, 854, 820, 808, 844, 802, 838, 828, 806, 876, 848, 822, 856.

All of which rolling stock, so returned and delivered to said Milwaukee and Minnesota Railroad Company, is parcel of the rolling stock on the said road when said receiver was appointed, or that which was purchased or built by said receiver, and that the balance of said rolling stock on said road when said receiver was appointed, and that purchased and built by said receiver as aforesaid, is still in the possession of said Milwaukee and St. Paul Railway Company, as this affiant is informed and believes, that is to say:

Seventeen locomotives.
Nine passenger cars (two having been destroyed.)
Five baggage cars.
Two caboose cars.
Fifty-nine platform cars.
Two hundred and sixty box cars.
Four wood cars.
Thirty-two hand cars.
Two snow ploughs.
One wrecking and pile-driving car.

This affiant further says that of the said rolling stock so retained by the said Milwaukee and St. Paul Railway Company, the following formed part of the rolling stock on the road when the said receiver was appointed, as hereinbefore stated, viz:

Twelve locomotives.
Eleven passenger cars.
Five baggage cars.
Two caboose cars.
Fifty-nine platform cars.
One hundred and sixty-seven box cars.
Four wood cars.
86 Thirty-two hand cars.
Two snow ploughs.

And that the same are reasonably worth five hundred twenty-five thousand one hundred and seventy dollars; and that of said rolling stock purchased or built by said receiver, the following is retained by said Milwaukee and St. Paul Railway Company:

Five locomotives out of eight.
Ninety-three box cars out of two hundred and twenty-eight.
One wrecking and pile-driving car.

And that the same is reasonably worth one hundred and eighty-

five thousand dollars. And further, that he is informed by a letter from said Hans Crocker, receiver, to Matt. H. Carpenter, hereto attached, and marked Exhibt No. 1, and verily believes that said Crocker, as receiver in this cause, on the 20th day of January, A. D. 1866, made a written demand on said Milwaukee and St. Paul Railway Company, a copy of which is hereto attached and marked Exhibit No. 2, and that said last-named company has never complied therewith, but on the contrary thereof, that said last-named company, on the 27th day of January, A. D. 1866, by a written communication addressed to said receiver, which is hereto attached and marked Exhibit No. 3, refused so to do, and still does refuse to comply therewith. And further, that he is informed by a letter from said receiver to said Carpenter, which is hereto attached and marked Exhibit No. 4, and verily believes that said Crocker afterwards, on the 31st day of January, A. D. 1866, made another communication to said last-named company, a copy of which is hereto attached and marked Exhibit No 5.

This affiant further says that he is acquainted with the handwriting of S. S. Merrill and of Hans Crocker, and has seen them both write, and that the signatures respectively to said Exhibits Nos. 1, 2, 3, 4, 5, and 6, hereto and hereafter attached, are genuine.

This affiant further says that Exhibit No. 6, hereto attached, is the written refusal of the Milwaukee and St. Paul Railway Company, by S. S. Merrill, its manager, to comply with the demand of said Milwaukee and Minnesota Railroad Company, contained in the printed document marked "A," attached prefixed to the foregoing affidavit of Nicholas Murray, and that the signature of said Merrill thereto is genuine.

87 This affiant further says that since the 1st day of January last, the following named persons have been and now are officers and directors of the Milwaukee and St. Paul Railway Company, viz: Alexander Mitchell, president and director, S. S. Merrill, manager and director, A. Reasoner, superintendent, Alanson Cary, secretary, and Washington Hunt, W. S. Gurnee, F. P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, jr., directors.

This affiant further says that the said Milwaukee and Minnesota Railroad Company has suffered damages in consequence of the non-delivery of said rolling stock by the said Milwaukee and St. Paul Railway Company, its officers and directors, as it ought to have done in obedience to the order and decree of this court in this cause in that behalf, to a large amount, and in the opinion of this affiant, to an amount exceeding fifty thousand dollars.

ERASTUS A. PATTERSON.

Subscribed and sworn to before me, this 7th day of April, A. D. 1866.

JAMES MoFARLIN,
U. S. Commissioner, District of Wisconsin.

Exhibit No. 1.

MILWAUKEE, *Jan.* 30, 1866.

M. H. Carpenter esq., att'y, &c.:

DEAR SIR: I enclose a copy of my letter of the 20th inst. to the Milwaukee and St. Paul Railway Company, demanding possession of the rolling stock, &c., and of their reply of the 27th; the delay was occasioned by the absence of Mr. Mitchell, the president of the road.

Very respectfully,

H. CROCKER, *Receiver, &c.*

Exhibit No. 2.

MILWAUKEE, *Jan.* 20*th*, 1866.

S. S. Merrill, esq., superintendent of the Milwaukee and St. Paul railway:

DEAR SIR: In obedience to the order of the circuit court of the United States for the district of Wisconsin, I have this day surrendered to the Milwaukee and Minnesota Railroad Company the eastern division of the La Crosse railroad, with all the personal property and rolling stock then in my possession as receiver; the order further requires your company and myself to surrender such original
88 rolling stock as I received under the appointment in the land grant case and Howard case, and which I surrendered to you under the order of court in the land grant case; I therefore demand possession of all said rolling stock, for the purpose of surrendering the same to the Milwaukee and Minnesota Railroad Company; said order further requires me to deliver a part of certain property, enumerated in the order, (copies of which have been served upon your company,) to the said Milwaukee and Minnesota R. R. Co., and part to your company. As a portion of said last-mentioned stock has, in operating the eastern division and making connections with the western, been necessarily run upon your division, and in fact been claimed by you, as rightfully in your possession under orders of the court, I now demand the same of you for the purpose of dividing the same as required by said order, and request that you and said company voluntarily agree upon a fair division; if not, I must take the responsibility of dividing said stock as justly and as much in accordance with the interest of both companies as I can.

Very respectfully,

H. CROCKER, *Receiver*.

Exhibit No. 3.

OFFICE OF THE MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Milwaukee, January 27th, 1866.

Hans Crocker, esq., receiver, &c.:

DEAR SIR: Your favor, dated the 20th inst., is this day received. We do not admit your exclusive possession of, or right to divide,

the rolling stock purchased and built by you as receiver, consisting of eight locomotives, two passenger cars, one baggage car, six caboose cars, and one hundred and thirty-four freight cars. This rolling stock has, since the first day of May, 1864, been in the joint possession of yourself and this company. The order of July 18th, 1865, entered by the circuit court of the United States in the case of Soutter, survivor, &c., *vs.* La Crosse R. R. Co. *et al.*, required that you should deliver to the Milwaukee and Minnesota company the proportion of said stock belonging to the eastern division, but made no provision for the division thereof.

It is therefore necessary for yourself and this company to make some division of it, in order that you may be able to carry out the said order of the court.

For that purpose we propose a division as follows: You may take six of the eight locomotives, one of the two passenger cars, all of the caboose cars, and one hundred and twelve of the one hundred and thirty-four freight cars, subject to the further order of the court, or such arrangement as may be made between the parties interested to effect a more perfect and accurate division.

If this proposition is not satisfactory to you, we should desire to receive one from you.

Of the locomotives so purchased by you, Nos. 22, 24, and 25 are now on the eastern division, and in possession of the Milwaukee and Minnesota co.; No. 36 (formerly 31) is at Portage, subject to your order, and Nos. 29 and 30 are now undergoing slight repairs at our shop at Watertown, but will be at Portage on Thursday next, subject to your order; one of the passenger cars, and nearly all the caboose cars are now on the eastern division, and a considerable portion of the freight cars. The remainder of the freight and caboose cars will be delivered at Portage, subject to your order, as soon as they can be collected and brought there. The locomotives, Nos. 23 and 28, which we propose to retain, are at our shops at Watertown, unfit for use, and being repaired by this company.

The rolling stock that was on the road when you took possession as receiver, on the 11th day of June, 1860, was, by an order of the court made in the land grant cause, on the 12th day of June, 1863, delivered to this company as purchaser under the decree in that case, and since that time has not been in your custody or under your control, but has been in the exclusive possession of this company. We must therefore decline to recognize your right as receiver to demand or receive from us any portion of said last-named rolling stock.

The title to this stock is now in litigation between this company and the Milwaukee and Minnesota company, and whenever the court shall have passed upon our right we shall cheerfully conform to its decision.

In the meantime, in order that the public may not be inconvenienced, and that the Minnesota company may have ample stock to operate said eastern division, we shall furnish of said rolling stock to said company sufficient, in addition to their proportion of that purchased by the receiver, to operate their road.

We have already furnished them from said original stock nine locomotives, and passenger and freight cars for the transaction of their business, and shall furnish them all that may be necessary in
90 addition to their proportion of that purchased by the receiver for the successful operation of said eastern division.

Yours, respectfully,

S. S. MERRILL,
General Manager.

Exhibit No. 4.

MILWAUKEE, *January* 31, 1866.

M. H. Carpenter, att'y, &c., esq.:

DEAR SIR: I enclose a copy of a letter to-day sent by me to the M. and St. P. R. W. Co., in reference to a division of the rolling stock owned jointly by them and your company; that is, the rolling stock bought and built by me. Not being an expert, and not knowing the present value of the property, I have thought it proper to leave the matter to those I believe competent to determine this value. If this arrangement is satisfactory to your company, I would like their approval in writing.

Yours, &c.,

H. CROCKER, *Receiver.*

Exhibit No. 5.

31 JAN'Y, '66.

S. S. Merrill, esq., manager of the M. & St. Pl. Co.:

DEAR SIR: I am desirous, as soon as possible, of making a division of the rolling stock purchased and built by me, and owned jointly by the eastern division of the L. and M. R. R. and your company, upon the basis fixed by the court. I assume, that in making this division, we must take the stock as it now is, and not as when built or purchased by me. For the purpose of making this division, I propose that Mr. Dwight Goodrich and Mr. W. E. Kittrage shall estimate and return to me the value of this rolling stock at the present time, and upon receiving their return and award, I will make a division as nearly just as possible.

You may object to these parties, for their being now in the service of the eastern division, (the M. and M. R. R. Co.) I have selected them, as they were in my service when this rolling stock was purchased and built, and both being competent men, I think them best qualified to determine the value of this property. While I have the power to make an arbitrary division, I prefer to make one satis-
91 factory to all parties.

Yours, &c.,

H. CROCKER.

Each car and engine will be numbered and appraised.

Exhibit No. 6.

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
Milwaukee, Jan. 29th, 1866.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all of the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, &c., *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, have been in the joint possession of the receiver and of this company, and is owned jointly by this company and the eastern division of said La Crosse and Milwaukee railroad.

The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the receiver, to wit, three (3) locomotives, and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs. Two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof subject to further review and correction by the court, or by the agreement of parties interested, and are ready to co-operate with him in making a fair and equitable division thereof.

92

We claim no interest in or control over the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to enable an immediate delivery thereof to you.

The rolling stock which was on the road June 11th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company, as purchaser thereof under the land grant decree, and the receiver was, as to said property, discharged, since which time this company has been in the exclusive possession thereof. The title of this stock is now in

litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession. Whenever the court shall have disposed of the questions there raised, and settle the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid, so far as possible, any inconvenience to the public or injury to you arising therefrom; we shall, therefore, furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage. and freight cars, which are now in your possession, and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said original stock, an ample and more than sufficient quantity for that purpose; and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right and legally and properly
93 in our possession and under our control; and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully, yours,

S. S. MERRILL,
General Manager.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To John W. Cary, esq., solicitor and counsel for the Milwaukee and St. Paul Railway Company:

SIR: You will please take notice that on the opening of the said court, at the court-room of said court, in the city of Milwaukee, on Wednesday morning, April 25, 1866, or as soon thereafter as counsel can be heard, a motion will be made by me on behalf of the Milwaukee and Minnesota Railroad Company, one of the defendants in this case, to attach the officers and directors of the Milwaukee and St. Paul Railway Company, viz:

Alexander Mitchell, president; S. S. Merrill, manager; A. Reasoner, superintendent; A. Cary, secretary and treasurer; and Washington Hunt, W. L. Gurner, F. P. James, J. W. Cary, S. Chamber

lain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, D. M. Hughes, and Dan'l Wells, jr., directors of said Milwaukee and St. Paul Railway Company, for contempt of said court, in refusing to comply with the order of said court made in this cause on the 18th day of July, A. D. 1865; and for refusal to deliver to the Milwaukee and Minnesota Railroad Company the rolling stock mentioned and described in said order, according to the demand of the Milwaukee and Minnesota Railroad Company in that behalf heretofore made by said company on the Milwaukee and St. Paul Railway Company, and the officers and directors thereof, a copy of which demand and accompanying papers is Exhibit A to affidavit of Nicholas Murray, hereto attached, and that they may be dealt with according to law.

94 And for an order of said court, sequestrating the stock, railroad property, assets and effects of said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators therefor, to receive and manage the same until said company, its officers and directors, shall comply with said order of said court, and answer all damages in the premises; and for such other and further relief as the said Milwaukee and Minnesota Railroad Company may be entitled to in the premises, and as shall be agreeable to equity and good conscience, a copy of which motion is hereto hereafter attached.

This motion will be founded on the annexed and foregoing papers, and upon the records, proofs, and papers on file in this cause.

You will further take notice that, on the hearing of said motion, an affidavit of Nicholas Murray will be read, correcting a mistake of date of service of papers, as therein set forth, from 1856, as erroneously written, to 1866, as the fact is, as to said service.

Dated April 5th, 1866.

MATT. H. CARPENTER,
Sol. for the Milwaukee & Minnesota Railroad Company.

In the circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others, defendants.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants to this cause, by Matt. H. Carpenter, its solicitor, and on the records, proofs, and papers on file in this cause, and on the foregoing affidavits and papers hereto attached, moves the court now here for an order of said court herein directing attachment to issue out of, under the seal of this court in due form of law, or in such form as the said court shall by said order direct, against Alexander Mitchell, president of the Milwaukee and St. Paul
95 Railway Company; S. S. Merrill, manager of said company; A. Reasoner, superintendent of said company; A. Cary, sec-

retary and treasurer of said company; and Washington Hunt, W. S. Gurnet, Frederick P. James, John W. Cary, Selah Chamberlain, Russell Sage, N. A. Cowdry, C. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, jr., directors of said company; and that such proceedings may be thereupon had as are agreeable to equity and good conscience, to convict said officers and directors of contempt of this court, for disobedience to and refusal to comply with the order of said court, as shown in the annexed and foregoing papers; and that said officers and directors may be held in close custody until they shall obey said order, by delivering possession of said rolling stock under and according to the said order of said court, a certified copy of which is part of said document A, attached to the foregoing affidavit of Nicholas Murray, and for such other, and further, or different relief in the premises as shall be agreeable to equity and good conscience.

The said Milwaukee and Minnesota Railroad Company further moves said court for an order to be made in this cause sequestrating the stock, railroad property, real and personal, assets and effects of the said Milwaukee and St. Paul Railway Company, and for the appointment of sequestrators to receive, hold, and manage the same until said last-named company, its officers and directors, shall comply with the said order of this court in this cause hereinbefore mentioned, and until said company shall pay, or cause to be paid, all damages to this defendant arising from the said disobedience of said order by said last-named company, its officers and directors, or until such other time as this said court shall direct; and that it may be referred to a master of this court to ascertain and report to said court the amount of such damages so sustained by this defendant; and that this defendant may have such other and further or different relief in the premises as shall be agreeable to equity and good conscience; and that the said officers and directors of said company may be adjudged and decreed by said court to be personally liable for the damages sustained by this defendant in the premises; and that
96 they may be personally ordered and decreed to pay the same when ascertained as aforesaid, and that they may be committed until the same be ascertained and paid, or that this defendant may have such other and further relief in the premises as the nature of its case may require, and as shall be agreeable to equity and good conscience.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Company, Def't.

Indorsed: I accept service of this motion and papers for next Wednesday morning, April 7, 1866.

JOHN W. CARY,
Sol. for M. and St. P.

APRIL 12, 1866.

This day came the parties, by their counsel, and the petition of the Milwaukee and St. Paul Railway Company for an order of court

modifying the order of the 18th of July, 1865, came on to be heard, and was argued by counsel, whereupon it is ordered by the court that the said petition and motion be, and the same is, denied.

And came the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its petition for an order applying the money in the hands of the receiver to the payment of the interest which became due in this cause on the 1st of March, 1866, as follows, to wit:

Petition of Mil. and Min. R. R. Co. for application of money in the hands of receiver.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the judges of the circuit court of the United States for the district of Wisconsin:

Your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, respectfully represents that the mortgage premises in this cause lately held by a receiver herein, Hans Crocker, esq., are subject to the following encumbrances in the following order, viz:

97 (1.) A mortgage to F. A. Palmer, on which nothing is due.

(2.) A mortgage to said Bronson & Soutter, to foreclose which this suit was commenced, and that on said mortgage, or the decree in this cause, forty thousand dollars of interest became due on the 1st day of March last, or about that time.

(3.) Two mortgages to the city of Milwaukee, or for its benefit, on which one instalment of interest, amounting to about eleven thousand dollars, became due about the first day of April, A. D. 1866.

Your petitioner further shows that there is sufficent money in the hands of said Hans Crocker to pay all said interest so due as aforesaid; and that said mortgages on which said interest is due are liens upon said mortgaged premises, and upon said fund in said receiver's hands prior to all other liens except said Palmer mortgage.

Your petitioner therefore prays that an order may be made by said court, directing said Crocker to pay said interest, due on said three mortgages, out of the money in his hands as aforesaid.

Your petitioner refers to the record and papers on file in this cause to establish the foregoing allegations.

The Milwaukee and Minnesota Railroad Company—
By MATT. H. CARPENTER, *its Solicitor.*

And this petition, and the petition of F. P. James, praying a similar order for the application of the money in the hands of the receiver to the payment of certain judgments therein specified, came

on to be heard, and was argued by counsel, whereupon the court took the same under advisement.

And by leave of the court the Milwaukee and Minnesota Railroad Company filed an amendment to its answer to the petition of F. P. James, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

Supplemental answer of Mil. and Minn. R. R. Co. to pet. of F. P. James.

The supplemental answer of the Milwaukee and Minnesota Railroad Company to the petition of F. P. James, filed Feb'y 20, 1866:

98 The said repliant, answering, says that there is now due on the mortgage given to said Bronson & Soutter, mentioned in said petition, the sum of forty thousand dollars interest, which matured on the first day of March, A. D. 1866, and about eleven thousand dollars matured about April 1, 1866, on two mortgages given on the eastern division of the La Crosse railroad, so called, and that said sums of interest are now due; and that said mortgages on which said interest is now due are the prior liens on the premises, except a mortgage to Palmer, on which nothing is due, as your repliant is informed and believes.

MATT. H. CARPENTER,
Sol. for Mil. & Min. R. R. Co.

DISTRICT OF WISCONSIN, *ss:*

Matt. H. Carpenter, being first duly sworn, on oath says that he knows the contents of the foregoing petition, and that he is informed by the records in court and otherwise, and verily believes that the same is true.

MATT. H. CARPENTER.

Subscribed and sworn to before me, this 12th day of April, A. D. 1866.

JAMES McFARLIN,
U. S. Com'r, Dis. of Wis.

And came the Milwaukee and Minnesota Railroad Company and filed notice of motion and petition of said company for attachment, &c., with proof of service indorsed thereon, as follows, to-wit:

99 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee, in said district of Wisconsin, present and presiding Hon. Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to the said circuit, and the Hon. Andrew G. Miller, district judge.

On the twentieth day of the term, to wit, on the eighteenth day of July, A. D. 1865, the following proceedings were had, to wit:

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

On motion of Matt. H. Carpenter, solicitor of the Milwaukee & Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause—

Ordered, that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated, as now appears, to be as follows, viz:

Amount fixed by order or decree nisi, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fees, etc., allowed at $35,796 33, with interest thereon from this day.

100 Ordered further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid to the day of such payment, and the costs in this cause to be taxed; that upon such payment the said receiver, Hans Crocker, and the said Milwaukee & St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee & Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee & Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges, and franchises, and personal and other property belonging or in any wise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged, except for the purpose of passing his accounts.

Ordered further, that before the Milwaukee & Minnesota Railroad Company shall be allowed and permitted to enter into possession as aforesaid, it shall make, execute, and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebra Howard and Selah Chamberlain, or the owners of said judgments, or either of them, all such

sums as may come into the hands of said company, which shall hereafter be found to be rightly applicable to the payment of their
101 claims, if they shall be established as liens upon said road. And that said company execute its bond to Hans Crocker, in the sum of twenty thousand dollars, with sufficient surety, to indemnify him for contingent liability mentioned in the report of the auditor in this cause. Ordered further, that said Howard or Chamberlain may, at any time hereafter, apply to the court for an additional bond, if the circumstances of the case shall require it, both of said bonds hereinbefore mentioned, to be approved by the clerk of this court. Ordered further, that if the said Milwaukee & St. Paul Railway Company shall pay over the sum in its hands, or any part thereof, as this day ordered, the said Milwaukee and Minnesota Railroad Company shall only be required to pay to the clerk of this court the balance of the amount so due said complainant at the date of payment by said last-named company over such sums so paid by said Milwaukee & St. Paul Railway Company, and said Milwaukee & Minnesota Railroad Company shall be entitled to possession as hereinbefore mentioned, upon payment of such balance, and giving bonds as hereinbefore ordered.

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES F. SOUTTER, survivor, &c., trustee, complainant,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, the Milwaukee & Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming, sureties, acknowledge themselves to be held and firmly bound unto the United States of
102 America, in the penal sum of twenty-five thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, said company and said sureties hereby bind themselves, their successors, heirs, representatives, and assigns, firmly by these presents.

Dated, signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, and this bond is upon the condition following, that is to say: That if the said Milwaukee and Minnesota Railroad Company shall well and truly pay to Sebre Howard and Selah Chamberlain, or to the owner or owners of certain judgments heretofore recovered in the district court of the United States for the district of Wisconsin, or in any other court whatever, in favor of said Howard and said Chamberlain, or either of them, or both of them, against the La Crosse & Milwaukee Railroad Company all such sums of money as may come into the hands of said Milwaukee and Min-

nesota Railroad Company, which shall hereafter be found to be rightly applicable to the payment of their claims, or the claim of either of them, if they shall be established as liens upon the railroad owned by the Milwaukee and Minnesota Railroad Company, being the railroad from Milwaukee to Portage, in the State of Wisconsin, according to the true intent and meaning of the order of this court, made in this cause in this behalf on the 18th day of July, A. D. 1865, then this bond to be void, otherwise in full force and virtue.

Dated, signed, sealed, and delivered the day and year first above written.

The Milwaukee and Minnesota R. R. Co.—

[L. S.] By A. C. GUNNISON, *President.*
[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. L.] A. C. GUNNISON.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

William R. Griffith, Albert C. Gunnison, and Alexander
103 Fleming, being duly sworn, on oath says, each for himself, that he is worth the sum of fifty thousand dollars over and above all liabilities and exemptions of property from sale on executions.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn to before me, this second day of January, A. D. 1866, as witness the seal.

(Signed) JOHN A. OSBORN, [L. S.]
U. S. Comm'r Southern District of New York.

[5 ct. r. s., cancl'd.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct. r. s., canc'd.]

DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond and the sureties thereto, this 9th day of January, A. D. 1866.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. Wis.

104 Circuit court of the United States for the district of Wisconsin, in equity:

JAMES T. SOUTTER, survivor, &c., complainant,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

Know all men by these presents, that the Milwaukee & Minnesota Railroad Company, as principal, and William R. Griffith, Albert C. Gunnison, and Alexander Fleming, as sureties, are held and firmly bound unto Hans Crocker, receiver in the above-entitled cause, in the penal sum of twenty thousand dollars, for the payment of which, well and truly to be made, the said company and said sureties hereby bind themselves, their successors, heirs, and representatives, firmly by these presents.

Signed, sealed, and delivered this 29th day of December, A. D. 1865.

Provided, however, this bond is given upon the express condition that if said Milwaukee & Minnesota Railroad Company shall well and truly, fully and entirely, indemnify the said Hans Crocker from and against all contingent liability mentioned in the report of H. L. Palmer, esq., auditor in this cause, and from all cost, expenses, and trouble in any and every way arising or resulting therefrom, then this bond shall be null and void, otherwise of full force, virtue, and effect.

Signed, sealed, and delivered the day and year above written.

The Milwaukee & Minnesota R. R. Co.—

[L. S.] By A. C. GUNNISON, *President.*
[L. S.] WM. R. GRIFFITH.
[L. S.] A. FLEMING.
[L. S.] A. C. GUNNISON.

105 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William R. Griffith, Albert C. Gunnison, and Alexander Fleming, being duly sworn, on oath says, each for himself, that he is worth the sum of forty thousand dollars over and above all liabilities and exemptions of property for sale on execution.

WM. R. GRIFFITH.
A. FLEMING.
A. C. GUNNISON.

Subscribed and sworn before me, this second day of January, A. D. 1866, as witness the seal.

[L. S.] JOHN A. OSBORN,
U. S. Comm'r for the Southern District of N. Y.

[5-ct. r. s., canc'd.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed jurat to bond, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of January, in the year of Our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct r. s., canc'd]

106 DISTRICT OF WISCONSIN, *ss:*

I hereby approve this bond, this 9th day of January, A. D. 1866, and the sureties thereto.

A. SCOTT SLOAN,
Clerk U. S. Circuit Court, Dist. of Wis.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States for the district of Wisconsin, hereby certify that the above and foregoing are true copies of an order made by said court, on the day and in the cause on which it purports to have been made, and of two bonds filed this day by the Milwaukee & Minnesota Railroad Company in my office, and duly approved by me this day.

I further certify that the Milwaukee & Minnesota Railroad Company has paid to me, in lawful money of the United States, the full amount, together with all interest, costs, and expenses, as provided by said order, to entitle that company to the possession of the railroad, rolling stock, and other things mentioned in said order in that behalf.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court at Milwaukee, this 26th day of January, A. D. 1866, and of the independence of the United States the ninetieth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN,
Deputy.

5-cent revenue stamp, cancelled.

107 OFFICE OF THE RECEIVER OF THE LA CROSSE AND MILWAUKEE R. R. CO.,
Milwaukee, Jan. 19th, 1866.

To whom it may concern:

I have this day, by order of the circuit court of the United States, for the district of Wisconsin, delivered possession of the so-called eastern division of this road to the Milwaukee and Minnesota Railroad Company.

All operating expenses, since the 9th inst., will be paid by said company.

H. CROCKER, *Receiver, &c.*

At a meeting of the directors of the Milwaukee and Minnesota Railroad Company held December 30th, 1865:

On motion of Thomas A. Scott, it was—

Resolved, That Alexander Fleming, vice president of this company, be authorized and empowered in the name of this company to demand and receive from Hans Crocker, receiver of the circuit court of the United States for the district of Wisconsin, in equity, in certain causes therein pending, and from the Milwaukee and St. Paul Railway Company, possession of the railroad and rolling stock, and all other things belonging to the Milwaukee and Minnesota Railroad Company.

I certify that the foregoing is a true copy from the minutes of the company.

[SEAL.] HENRY M. ALEXANDER,
President.

108 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others.

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, and each and every one of them, and to Alexander Mitchell, president of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rogers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, S. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Philipps, James Kindling, Uriah Reynolds, Scott Dimick, Henry More, D. W. Heading, C. Renous, D. Willey, E. Crippen, James Little, sr., H. Sage, S. Ellis, M. Coffin, S. Anderson, L. M. Follett, F. Toucey, A. Peck, J. Morrison, S. Sleeper, W. F. Fuller, M. Farrar, O.

Hutchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace, P. Blackwell, H. E. Emerson, F. V. Finch, W. E. Kittredge, Geo. Huntington, L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm. Bloomfield, Frank Keiting, J. Johnson, Wm. Caton, O. Warriner, Geo. Thompson, P. Plumb, C. E. Page, J. Sargent, M. Kelley, G. Gould, E. Fox, W. McCurdy, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosh, Wm. Ferguson, Geo. Howard, A. Jones, A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton. J. Little, C. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chadwick, P. New, C. Magatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fischback, George Wells, J. Mackey, A. C. Kenniston, ——— Hall, William Cosgrove, D. M. Christy:

Please take notice that the papers herewith served are certified copies of a certain order of said court in the above-entitled cause, and copies of the two bonds, duly approved by the clerk of said court, which have been filed in the office of said clerk in this cause by the Milwaukee and Minnesota Railroad Company, and in pursuance of and in compliance with said order; and also a copy of a paper executed by Hans Crocker, esq., receiver of said court; and also a copy of a resolution of the board of directors of the Milwaukee and Minnesota Railroad Company, empowering Alexander Fleming, vice president of said company, to receive the property mentioned in said order.

You will further take notice that the said Milwaukee and Minnesota Railroad Company now and hereby demands that you deliver to the said Fleming possession of any and all of the rolling stock and other property mentioned in said order, now in your possession or under your control, or in the possession or under the control of each, any, and every one of you, according to the exigency, direction, and command of said order.

You and each of you will further take notice that for any failure on your part, or on the part of any one or more of you to comply with the terms of said order and this demand, you, and each and every one of you, will be proceeded against for contempt of said court; and that each and every one of you will be held liable severally and individually for the value of any property in your hands, and for damages for detaining the same and otherwise.

Dated February 12, 1866.

The Milwaukee and Minnesota R. R. Co.—

By ALEXANDER FLEMING,
Vice President.

MATT. H. CARPENTER,
Solicitor.

111 *Correspondence between the Milwaukee and Minnesota Railroad Co. and the Milwaukee and St. Paul Railway Co., as to the refusal of the latter company to deliver possession of rolling stock under order of the United States circuit court.*

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY CO.,
Milwaukee, January 29th, 1866.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the eastern division of said La Crosse and Milwaukee railroad.

112 The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division, or specifying the particular locomotives or cars to be delivered.

A portion of this stock has already been delivered to you by the receiver, to wit: three (3) locomotives and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs; two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof subject to future review and correction by the court, or by the agreement of parties interested; and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 11th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was, as to said property, discharged; since which time this company has

been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession. Whenever the court shall have disposed of the questions there raised, and settled the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid, so far as possible, any inconvenience to the public or injury to you, arising therefrom. We
113 shall therefore furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as of our own property, nine (9) of said locomotives, together with passenger, mail, baggage, and freight cars, which are now in your possession; and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish in addition of said original stock an ample and more than sufficient quantity for that purpose, and in case of a difference of opinion on the subject, we will submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right, and legally and properly in our possession and under our control, and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18, 1865, so far as the same is obligatory or binding upon us.

Respectfully yours,

S. S. MERRILL,
General Manager.

MILWAUKEE, *January* 31*st*, 1866.

To the Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, and each and every one of them, and to Alexander Mitchel, president of said company, N. A. Cowdrey, Horace Galpin, David M. Hughes, William Gould, Frederic P. James, George Smith, Asahel Finch, jr., William H. White, Russell Sage, George W. Rodgers, Selah Chamberlain, S. S. Merrill, John W. Cary, Walter S. Gurnee, Washington Hunt, ——— Wesley, Daniel Wells, jr., A. Reasoner, Alanson Cary, secretary of said company, J. W. Crippen, Frank Lyman, Westley Todd, O. F. Willis, W. L. Mead, S. M. Green, Charles Philipps, James Kindling, C. Renous, D. Willey, E. Crippen, James Little, jr., H. Sage, J. Ellis, M. Coffin, J. Anderson, A. Peck, S. Sleeper, M. Farrar, O. Huchinson, Ham Grace, John Hodges, J. Patter, E. Wagner, R. Grace,
P. Blackwell, H. F. Emerson, F. V. Finch, W. E. Kittredge,
114 Geo. Huntington, L. B. Abbott, P. Lyons, T. B. Livingston, H. C. Robinson, C. A. Brickell, C. W. Snow, R. Laferty, A. Wagerner, Wm. Bloomfield, Frank Keiting, J. Johnson, Wm. Caton,

O. Warriner, Geo. Thompson, P. Plumb, C. P. Page, J. Sargeant, M. Kelley, G. Gould, E. Fox, W. McCurday, C. Williams, O. Blanchard, C. J. Hoxey, C. Eales, J. McSorley, P. Melaney, Wm. McIntosh, Wm. Ferguson, Geo. Howard, A. Jones, A. Downer, J. Donahugh, R. Tupper, J. Ryan, E. Colton, J. Little, G. Hardier, Sam. Reed, Jas. Little, jr., J. Jones, J. Williams, J. Moran, F. V. Finch, jr., Aug. Ruch, P. McSorley, J. Norris, C. C. Chadwick, P. New, C. Magatt, E. Colton, Wm. Brown, Thomas Donahugh, Patrick Grace, J. Brooks, A. Fischback, George Wells, J. Mackey, A. C. Kenniston, ——— Hall, D. M. Christy, W. P. Cosgrave:

GENTLEMEN: In reply to the demand heretofore made on you by the Milwaukee and Minnesota Railroad Company, that you, and each and every of you, comply with a certain order of court therein named, the Milwaukee and Minnesota Railroad Company has just received a letter from S. S. Merrill, manager of the Milwaukee and St. Paul Company, of which the foregoing is a copy.

As to the rolling stock purchased by the receiver, this company has requested the receiver to proceed at once and deliver to this company such proportion thereof as it is entitled to under the order of the court, and will attend said receiver at any time and place to be named by him to receive the same.

As to the rolling stock on the La Crosse and Milwaukee railroad when the receiver was appointed, except the forty box cars, the letter of your manager just received informs this company you do not intend to deliver it.

It is not supposed that your counsel need any instruction upon this subject, nor is it expected that this letter will produce any practical result, if you are disposed to resist the authority of the court. But being instructed by the Minnesota company to take the proper steps to hold the officers, directors, and agents of the St. Paul company liable personally for the consequences of this contempt of the court, and as many of those officers are gentlemen with whom I have always been on friendly relations socially, I have resolved to lay be-
115. fore them the facts in the case as they appear of record; and if then they choose to disobey the order of the court, the consequences will be upon them.

The eastern division of the road was first mortgaged, and the mortgage conveyed the road from Milwaukee to Portage, together with the rolling stock and franchises pertaining thereto between the limits aforesaid; but did not specify the amount of rolling stock intended to be conveyed by the mortgage.

The western division was mortgaged in the same way.

Subsequently the whole road, and all its rolling stock, property, and franchises were mortgaged to Barnes, and on the foreclosure of that mortgage in May, 1859, passed to the Milwaukee and Minnesota company. This has been so decided by the Supreme Court of the United States.—(2 Wallace, 304.) Thereby the Minnesota company became the successor of the old La Crosse company, and the owner of the road, property, and franchises subject to prior legal liens.

Subsequently a suit was commenced in the United States court to foreclose the western division mortgage, and another was afterwards commenced in same court to foreclose a mortgage on the western division. As each of these suits was distinct from the other, and each was commenced to foreclose a particular mortgage, one of which mortgages covered the eastern division with its rolling stock, and the other the western division with its rolling stock, and as neither mortgage specified how much of the whole rolling stock was covered by it, of course it was necessary for the court to ascertain this by proceedings to that end.

For that purpose the court made an order of reference in each of these cases, among other things as follows:

WESTERN DIV. CAUSE.

"And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage, and also in the first and second mortgages respectively."

EASTERN DIV. CAUSE.

"And it is further ordered by the court that the said masters ascertain and report the whole amount of rolling stock on the whole road, and that they specify the quantity thereof that is covered by and included in the first mortgage, and also in this mortgage and the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp."

The masters made their report as follows:

WESTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling
116 stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred and sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand and six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount to $623,235 78.

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased by the proceeds of a portion of the bonds to which this mortgage is collateral, and all the remainder of the said rolling stock is covered by and in-

cluded in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A.D. 1857."—(Record, 72.)

EASTERN DIV. CAUSE.

"We have also ascertained the whole amount of rolling stock on the whole road. The amount thereof, at the cost price, was, at the date of filing the bill of complaint in this cause, five hundred sixty-nine thousand six hundred and thirty-five dollars and seventy-eight cents. And an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount now on the road, six hundred twenty-three thousand two hundred and thirty-five dollars and seventy-eight cents, ($623,235 78.)

"And we have ascertained, and do further report, that of the said rolling stock, forty box cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and seventy-nine dollars and sixty-four cents, ($31,979.64,) and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the mortgage of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, and no other. And all the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the complainants' mortgage specified in the bill of complaint."—(Record, 90.)

This report, which gave to the western division but forty box cars, was excepted to by Mr. Carey for the complainants in that cause, upon the ground that it ought to have given all; and was excepted to by Mr. Jas. S. Brown in the eastern division cause, because it ought not to have given the western division any of the rolling stock, not even the forty box cars. But the court overruled all these exceptions and made its decree in the western division cause for the sale of that division and said forty cars.

The complainants in the western division cause proceeded to execute the decree by a sale, and the Milwaukee and St. Paul company claims to have become the purchaser of what was sold at that sale. This is the title, and the only title of that company to any part of the road or franchises of the old La Crosse company.

The premises of the eastern division mortgage, viz:, the
117 road from Milwaukee to Portage, and all the rolling stock except the forty box cars, was, of course, in no way affected by the sale of the western division and the forty cars.

At the July session, 1865, of the United States court, an order was made, on a mandate from the Supreme Court of the United States, among other things, as follows:

"On motion of Matt. H. Carpenter, solicitor of the Milwaukee and

Minnesota Railroad Company, one of the defendants in this cause, and on the mandate of the Supreme Court of the United States in this cause—

"Ordered that the whole amount due the complainants in this cause, and to become due before the day of sale of the mortgaged premises, are estimated as now appears to be as follows, viz :

"Amount fixed by order of decree *nisi*, $405,290 05, together with interest thereon since September 27, 1864. Coupons due March 1, 1865, $40,000, with interest thereon since that date. Coupons to become due September 1, 1865, $40,000, with interest thereon from that date. Expenses, counsel fee, etc., allowed at $35,796 33, with interest thereon from this day.

"Ordered, further, that in case said Milwaukee and Minnesota Railroad Company shall, before a sale of the mortgaged premises in this cause, pay to the clerk of this court for the complainant in this cause the several sums above mentioned, with interest thereon as aforesaid, to the day of such payment, and the costs in this cause to be taxed, that upon such payment the said receiver, Hans. Crocker, and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees, deliver over to said Milwaukee and Minnesota Railroad Company the eastern division, so called, of the La Crosse and Milwaukee railroad, so called, from Milwaukee to Portage, together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars numbered as follows, viz : 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408, and also deliver to said Milwaukee and Minnesota Railroad Company such proportion of the rolling stock that was purchased by the receiver as 121,178 dollars bears to 26,199 dollars, together with all the rights, privileges and franchises and personal and other property belonging or in any wise appertaining to said railroad from Milwaukee to Portage, and that the said receiver be thereafter dismissed and discharged except for the purpose of passing his accounts."

This order has been fully complied with by the Minnesota company, nearly half a million of dollars have been paid into court, bonds have been filed, approved, and the Minnesota company thereupon
118 became entitled to possession under the order, and the receiver has actually surrendered the eastern division.

The Minnesota company thereupon served upon your company a certified copy of the order, the bonds filed, and a certificate of the clerk of the court that the order had been fully complied with and notice of the surrender of the eastern division by the receiver; and demanded of your company, and of its officers, directors, and agents. by name, a surrender of the rolling stock under the order of the court.

The letter before me is understood to be the refusal of your company to comply with that order.

The reason you assign is that you claim to be the owner, not only of the forty box cars sold to you at the foreclosure sale, but also of the rolling stock which the court adjudged was not covered by your mortgage, and refused to sell to you; and you assert that the court delivered possession of this rolling stock to you as purchaser under the western division foreclosure sale.

To show you how unfounded is this claim, and how untrue is the basis upon which it rests, I ask your attention to the facts as they appear of record.

I have already shown you that for the purpose of ascertaining what rolling stock was covered by the land grant mortgage, in other words, belonged to the western division, the court made an order of reference, the masters reported only forty box cars, your counsel excepted to the report on that ground, and the court overruled the exception; and that the decree directed the sale of the forty box cars only. The order under which you obtained possession as purchaser was as follows:

"Whereupon it is ordered by the court (Mr. Carpenter in behalf of the Milwaukee and Minnesota Railroad Company, and Mr. Ryan in behalf of William Crawshay and Orville Oddie, objecting) that the receiver deliver over to the said Milwaukee and St. Paul Railway Company the said railroad and appurtenances between Portage City and La Crosse, and the rolling stock and property specially described in the decree.

"And it is further ordered by the court that a full and perfect inventory be taken by the receiver of all the rolling stock other than the forty box cars specially mentioned in the decree; and of all personal property belonging to the said La Crosse and Milwaukee Railroad Company, including such as have been procured by the receiver and now on hand; and that he make report of the same on the eighth day of June next.

119 "And as in pursuance of the act incorporating the La Crosse and Milwaukee Railroad Company, a continuous road has been constructed and operated between La Crosse and Milwaukee, and the interest of the public requiring that the said road, as constructed and operated, shall continue to be so operated, it is ordered by the court, (reserving the right to rescind, change, or modify this order at any time hereafter,) that the said Milwaukee and St. Paul Railway Company and the receiver who continues to be the receiver of the eastern end or division of said La Crosse and Milwaukee railroad, between Milwaukee and Portage City, jointly operate said road between La Crosse and Milwaukee without interruption, and that the said Milwaukee and St. Paul Railway Company, and the said receiver, jointly, employ all the agents and persons necessary for the proper operating of said road; that the revenues of said road be paid to the receiver as heretofore, who shall keep all accounts and books for the inspection of the said company, and said company may keep duplicate books, and that all payments and disbursements for necessary expenses in operating said road shall be paid out of the joint fund, each division of said road to be entitled to its proportion of revenue and to be

charged with its proportion of disbursements, and that the said receiver pay coupons of bonds on prior mortgages as heretofore."

You will see from reading this order, that, as purchaser, you obtained possession of only the rolling stock and property specially mentioned in the decree, that is, the forty box cars.

But for the purpose of keeping the road entire as it was chartered, the receiver and your company was authorized to operate the whole road, including the eastern division and all the rolling stock except the forty cars, jointly.

Afterwards, on the 12th June, the court, for the purpose of more completely securing the operation of the whole road, as an entire, continuous road under the charter, made two orders as follows:

WESTERN DIVISION CAUSE.

"On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road bed and track, with its depots, station-houses, engine-houses, and all other property belonging to said railroad between the said points; and the forty box cars mentioned and described in the decree.

"And also the share or proportion of the rolling stock and
120 property purchased by the receiver, as mentioned in the decree.

"And also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court. And it is further ordered by the court, that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under the appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed."

EASTERN DIVISION CAUSE.

After reciting the petition of the St. Paul Company, &c., &c.:

"It is thereupon ordered by the court that the order appointing a receiver in this case be modified in the manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: That the receiver let the said Milwaukee and St. Paul Railway Company into the possession of the eastern division of the La Crosse and Milwaukee railroad from Portage City to Milwaukee, with the appurtenances and property and rolling stock thereto belonging. And that the said Milwaukee and St. Paul Railway Co., subject to further order or orders of the said court, operate said eastern division of said railroad in connection with the said western division thereof, so that one continuous line of railroad between La

Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

"And it is further ordered by the court that the said Milwaukee and St. Paul Railway Co. shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Co., and of its board of directors, in relation to the business and operation of the whole line of road; and that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad. And that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

"And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States, for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management
121 of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues of said road according to this order."

The order in the western division cause deserves particular attention. It orders the receiver:

(1.) To deliver to the St. Paul company full possession of the western division; "and the forty box cars mentioned and described in the decree."

(2.) To deliver also full possession of the "share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree;" thus terminating the joint occupancy with the receiver with which that possession had been burdened by the order of May 7.

So far the order is absolute, and shows by the repetition of the

words at the end of each clause, "mentioned and described in the decree," that the court was delivering possession of what the St. Paul company had acquired title to by its purchase under the decree.

Then the order proceeds to direct the receiver to deliver also, subject however to all "other or previous liens or claims," the whole rolling stock on hand when he was appointed, that is, the remainder of the rolling stock except the forty box cars, which belonged to the eastern division, and of course was not mentioned and described in the land grant decree, therefore this clause is not followed, as the others were, by the words, "mentioned and described in the decree."

Considering the careful and guarded language of this order, it is impossible not to see that the court was drawing the distinction, in what it ordered to be delivered to the St. Paul company, between that which belonged to them by their purchase under the decree; that is, the western division, the forty box cars, and the proportion of rolling stock purchased by the receiver; and that which was delivered to them temporarily, but not by virtue of their purchase under the decree.

The court in substance said—"take absolutely all that was purchased by you under the decree—the western division, forty
122 box cars, and the proportion of rolling stock purchased by the receiver; this you have purchased. The remainder of the said rolling stock has been ascertained to belong to the eastern division, and it must there remain; but we give it, with the eastern division, into your possession temporarily, that the whole may be operated together."

2. Turn now to the order in the eastern division cause. The court had decided that all the rolling stock, except forty box cars, was included in the eastern division first mortgage: that is, that it belonged to the railroad between the limits of Milwaukee and Portage; because such is the description in that mortgage. The court had determined, for reasons of public policy, etc., set forth in the preamble to this order, to give to the St. Paul company the possession of the eastern division mortgage premises temporarily. This order gives to the St. Paul company the possession of the eastern division "and rolling stock thereto belonging," but subject nevertheless "to any further or other order, rescinding, altering, or modifying this order now here made."

How absurd to pretend that the court in this order regarded the rolling stock pertaining to the eastern division as having been purchased by the St. Paul company. Did a court ever yet put a purchaser into possession after final decree and confirmation of sale, "subject to any further order rescinding" the same? This right reserved to the court to rescind the order giving the St. Paul company the eastern division "and the rolling stock belonging thereto," is conclusive that the court was granting to that company a favor and not a right; a temporary possession, not a title.

Under these orders, and as a condition to obtaining possession of the eastern division and its rolling stock, your company gave a bond, as follows, which will probably become matter of interest to its signers at no very distant day:

Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William H. White, George W. Rodgers, Selah Chamberlain, and Asahel Finch, as sureties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its assigns, or any party interested herein, to which payment,
123 well and truly to be made to the said obligee, the said obligors bind themselves, their heirs, executors, administrators, and assigns, firmly by these presents.

Sealed with our seals, and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James T. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order, bearing date on the twelfth day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, property, and rolling stock belonging thereto, and directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to operate said eastern division of said railroad in connection with the western division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise.

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board.

Now, therefore, if the said Milwaukee and St. Paul Railway Com-

pany shall faithfully comply with said order of said court, and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and
124 the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues the said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Company—by its president:

[SEAL.]	D. M. HUGHES, *President.*
[SEAL.]	D. M. HUGHES.
[SEAL.]	AL'X MITCHELL.
[SEAL.]	GEO. W. ROGERS.
[SEAL.]	F. P. JAMES.
[SEAL.]	N. A. COWDRY.
[SEAL.]	RUSSELL SAGE.
[SEAL.]	SELAH CHAMBERLAIN.
[SEAL.]	HORACE GALPIN.
[SEAL.]	W. H. WHITE.
[SEAL.]	A. FINCH.

Signed, sealed, and delivered in presence of—
JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

JUNE 13, 1863.

This bond and the sureties approved by the court.

A. G. MILLER.

It was under these orders and this bond that you took possession of the rolling stock in question, really as receiver of the court in the eastern division cause, for the purpose of operating the La Crosse road as a continuous line, without diversion of travel or business from the eastern division at Portage.

In this connection, let me call your attention to extracts from two opinions of the court, explaining the reason why the order was made giving you possession:

"The only legitimate question before the court in June last, when the order modifying the action of the receiver was made, and now is, how is the road to be operated, during the pendency of the appeal, as an entire road under the grant of the charter, to the best interests of the parties, the creditors, and the public? It was conceded that the use of the road could not to be obstructed at Portage City, but that the cars must be run through the whole length of the road. * * * * This order was intended to prevent a diversion of the travel and business on the western division from the eastern, and to save the expense of two sets of employees, and to prevent interruption of the public."

And again the judge says, in another opinion:

"The first duty of the court is to secure the interests of the public under the grant of the charter to the La Crosse company.
125 The second duty is to protect the rights of the lien creditors and the parties litigant. The receiver was appointed for these two purposes."

"For this purpose the orders of the 12th June, 1863, in this case and in the Howard case, modifying the original orders appointing the receiver, were made. The Milwaukee and St. Paul company were allowed by those last orders to operate temporarily the eastern division of the road in connection with the western division, of which they were owners, for the sake of economy in operating the road, to secure the use of all the rolling stock on the whole line, and to restrain the St. Paul company from diverting trade and travel from the eastern division. It was known that the St. Paul company were about to connect their division from Portage City to the Watertown road, and thence to Milwaukee, which might affect the eastern division.

"The order allowing that company to operate the eastern division, subject to the control of the court and the supervision of the receiver, and under heavy bonds with adequate security, prohibiting them from putting a car on their extension from Portage or on any other road east of that point, I considered it a proper duty for the public and the parties to secure the use of a continuous route according to the charter, without interruption or deviation of trade or travel between the termini of the road."

You will judge for yourself how faithfully you have executed the spirit of the orders giving you possession of our property, and what are the chances of your liability in your bond.

In the same connection, let me also remind you of a decision of the Supreme Court of the United States upon this very subject, reported in 2 Wallace, 609, in which the court, after an examination of the mortgages and a review of the foregoing orders, decide:

1. That the land grant mortgage did not cover the rolling stock belonging to the eastern division; and

2. If it had done so, the decree of the court, under which alone you can claim title, ordered the sale of only the forty box cars. It was after this decision of the Supreme Court of the United States, and in pursuance of a mandate from that court that the circuit court ordered you to deliver up this rolling stock to our company on payment of the money, &c., which you now refuse to do.

This decision also sets at rest the pretence now repeated by you, in the letter before me, that you received possession of this rolling stock as purchaser. The court say, 2 Wallace, p. 240:

"On the 7th day of May, two days after the order of confirmation, the Milwaukee and St. Paul Railway Company presented their petition for the discharge of the receiver, and for the possession of
126 the property which they had purchased. The court thereupon made an order 'that the receiver deliver over to said Milwaukee and St. Paul Railway Company the said road and appurtenances between Portage City and La Crosse, and the rolling stock

and property specially described in the decree.' The only rolling stock specially described in the decree was the forty box cars, and the proportion of stock purchased by the receiver. The fact that this was ordered to be delivered to the purchasers, and no more, is almost conclusive of two things: first, that the judge understood his decree and previous rulings as we have interpreted them; and second, that he had no idea that he had confirmed a sale of all the rolling stock on the road to the purchasers at the sale. It is true that over a month later he ordered the eastern division of the road and the remainder of the rolling stock into the possession of the same company. But this was done to enable them to run the whole road as a through route, on the principle of public policy, and that it was better for all parties concerned. This he declared in an opinion delivered at the time, and it is substantially indicated in the orders."

I understand you derive great consolation from the fact that three of the judges dissented from that decision.

But on examining the dissenting opinion you will find that it in no way sustains your pretence of title. The majority of the court held that this rolling stock belonged, in severalty, not to you but to us; while the minority held that it did not belong to either of us, in severalty, but ought to be operated on the whole road for the benefit of both of us, and all concerned.

Two months after the order of the court requiring your company to deliver to us this rolling stock, as part of the eastern division, and after the decision of the Supreme Court of the United States above referred to, your counsel, Mr. John W. Carey, assisted Mr. Ogden to obtain a decree in the eastern division suit for the sale of the mortgage premises in that cause; and that decree directs the sale of this rolling stock in the precise language of description employed in the order, as belonging to the eastern division. Under this decree the eastern division and this rolling stock were advertised for sale, and only saved by the payment by our company of near half a million of dollars as required by that decree.

This shows that your own counsel, Mr. Carey, regards this rolling stock as covered by the mortgage, which only describes rolling stock appurtenant to the eastern division, because he knew that the Supreme Court of the United States had decided, in the above-
127 mentioned suit between your company and ours, that the mortgage on the western division, under which alone you can claim, did not cover the rolling stock belonging to the eastern division. The language of the court, (2 Wallace, 635,) speaking of mortgages on the eastern and western divisions, respectively, is: "But when we consider it [the descriptive part of the mortgages] in reference to the clear purpose of the parties to make the mortgages distinct and different as to every thing else conveyed by them, we conclude that it was intended that the rolling stock covered by each mortgage was that which was properly appurtenant to each particular division of the road."

From this you will see that Mr. Carey is blowing hot and cold on this question with a vengeance. In the eastern division cause, he

claims and obtains a decree for the sale of all this rolling stock as part of the eastern division; but since that sale has been prevented, by our paying the money, he claims that this rolling stock belongs to the western division, not to the eastern.

This is not at all surprising after the former proceedings of your company. Mr. Carey, as your counsel, once obtained possession of the eastern division and this rolling stock, for the purpose of carrying out the "public policy of the State," to keep this a continuous line. You now not only seek to defeat this end, but Mr. Carey has signed an opinion denying the power of the legislature to prevent your doing so.

The Milwaukee and Minnesota Railroad Company, if it hears nothing further from you, will understand the foregoing letter of your manager as a refusal on the part of the Milwaukee and St. Paul Railway Company to obey the order of the court; and you, and each and every one of you, will be held responsible, not only in your corporate, but in your individual capacity, for damages.

Your letter, by way of adding insult to injury, offers to furnish us sufficient rolling stock to do our business. There is nothing in your past dealings with, or present relations towards, our company that can induce us to believe that you would be willing to do us any favor. This offer is therefore regarded as only an evidence that you know and feel that you are acting in a most high handed and illegal manner in disobeying the order of the court, and are only desirous of diminishing the damages you know we must ultimately recover against you.

You will please take notice that we demand of you a complete and full performance of the order of the court in this behalf, and
128 do not wish to hire, or rent, borrow, or use, any rolling stock, except that which the order requires you to deliver, and that, and all of it, we claim and demand to be immediately delivered.

In this connection I may say, that the whole rolling stock the order entitles us to is necessary to do the business of our company; and we are desirous of receiving the same immediately, for the purpose of putting it in repair before the commencement of the spring business.

You will therefore please take notice that the Milwaukee and Minnesota Railroad Company demands an immediate compliance with said order, on the part of the Milwaukee and St. Paul Railway Company, and its directors, officers, agents, and employees, and especially of each and every of you to whom this is directed it demands such compliance.

MATT. H. CARPENTER,
Solicitor of the Milwaukee and Minnesota R. R. Co.

The Milwaukee and Minnesota R. R. Co., by—
A. FLEMING,
Vice President.

129 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Nicholas Murray being first duly sworn, says that at the city and State of New York he served the foregoing documents, hereto attached, upon the following named persons, at the dates respectively set opposite their names, by delivering to, and leaving with, each of them a copy of said documents, and exhibited then and there to each of said persons the said originals, hereunto attached, at the time, and as part of said service, viz:

February 14, 1866, Russell Sage.
February 14, 1866, D. M. Hughes.
February 14, 1866, N. A. Cowdrey.
February 14, 1866, F. P. James.
February 15, 1866, Washington Hunt.
February 16, 1866, Horace Galpin.
March 5, 1866, W. S. Gurnee.

NICHOLAS MURRAY.

Subscribed to and sworn before me, this ninth day of April, A. D. 1866.

[SEAL.] EDWIN F. CURRY, JR.,
Notary Public, State and City of New York.

Indorsed: "Copy served on me April 12, 1866. John W. Cary, M. & St. P."

APRIL 12, 1866.

This day came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed the affidavit of Nicholas Murray, as follows, to wit:

130 Circuit court of the United States for the district of Wiscon, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others, defendants.

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Nicholas Murray, being first duly sworn, on oath says that on the 14th day of February, A. D. 1866, he served certain papers in this cause upon Russell Sage, D. M. Hughes, N. A. Cowdrey, F. P. James, directors of the Milwaukee and St. Paul Railway Company, and on the 15th day of the same month he served the same upon Washing-

ton Hunt; and that he intended to furnish proof of such service to Matt. H. Carpenter, solicitor of the Milwaukee and Minnesota Railroad Company, but that he is informed that in drafting the affidavit of such service the year 1856 was by mistake written, instead of 1866, as it should have been.

NICHOLAS MURRAY.

Subscribed and sworn to before me, this ninth day of April, A. D. 1866.

[SEAL.] EDWIN F. CURRY, JR.,
Notary Public, city of New York.

Indorsed: "Copy served on me April 12, 1866. John W. Cary, solicitor for M. & St. P. Rw'y."

APRIL 13, 1866.

This day came the receiver, by his counsel, and filed his report, showing the amount of money in his hands as receiver, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in chancery.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

131 To the judges of the circuit court of the United States within and for the district of Wisconsin, in chancery, sitting:

Hans Crocker, receiver, reports to your honors as follows:

1st. That since the date of this last report, in March, 1866, (at which time he reported the sum of $62,892 51 in his hands,) he has received $48,789 16.

2d. That he has paid out $10,158 28.

3d. That there are unliquidated claims against him as receiver, for damages arising from accidents in running the road, amounting to $25,000, for which suits have been brought, and are now pending, and where any sums recovered will be a proper charge against the funds in his hands; that he has not been able as yet to settle the same, because the amounts can be determined only by a jury; that said amount has been increased $5,000 since the order of this court of the date of 18th July, 1865.

4th. That there are also other just claims against him as receiver, and against said funds in his hands, which have not yet been adjusted, but which, with legal expenses in defending suits, &c., will probably amount not less than $.

5th. That the clerk of this court certified that the Milwaukee and Minnesota R. R. Co. had complied with the order of this court, of July 18th, A. D. 1865, and he (the receiver) surrendered to said com-

pany possession of the said road and of the rolling stock, (so far as the same was in his possession,) in obedience to said order; that, however, (as the receiver is advised and believes,) the bond given by the the said company to secure and indemnify the receiver was not in compliance with said order, but was a fraud upon it and upon the receiver, and given in contempt of this court; that the persons signing said bond were Alexander Fleming, Albert C. Gunnison, and William R. Griffith; that neither of them resides in this district or within the jurisdiction of this court; that he has made diligent inquiry about them, and states, upon information and belief, that said Gunnison and Fleming are entirely worthless, having no property liable to execution which an officer can find, unless, perhaps, some shares in the stock of said company, which could not be sold for want of
132 buyers, and is worthless; that he has been unable to ascertain anything about said Griffith, except that he is said to reside in New York, but believes that he too is worthless; that the receiver submits to the court that his expenses and charges as officer of this court in taking charge of the property and managing the road, and his liabilities growing out of such management are in law, and ought to be of right the first lien upon the frauds received, and that it is injurious to him, and inequitable, when such claims exist, to take the funds with which they ought to be paid out of his hands, thereby compelling him to advance his own money in payment, and hunt up non-resident parties to a bond whose obligors may be worthless. He, therefore, with the permission of the court, in showing by this, his report, the sum in his hands applicable to other purposes, charges in account an amount equal to said claims.

That he has not in former reports deducted anything for his services as receiver, as allowed by the court upon the report of H. L. Palmer, auditor, to wit, $38,569 42, up to February 28th, A. D. 1865, which he now charges in account; and that he also charges for his services from said February 28th, A. D. 1865, to this April 10th, A. D. 1866, at the rate heretofore fixed by this court, $5,555 54.

That the sum of $48,789 16 has been collected by the treasurer and other officers of the Milwaukee and St. Paul R. R. Co., who are employed and paid by said company, and this receiver jointly, agreeably to the arrangement heretofore proven and stated to this court; that said sum has been paid to the receiver, but remained for a time after collection in the hands of the treasurer, (but subject to this receiver's demand at any moment,) for the purpose of a final settlement and in consequence of a claim made by said company, and the request that he would not withdraw it until this court should pass upon that claim, that he refused to allow said claim, and has since demanded and received said sum; but at their request, and for his own protection, states the nature of said claim to the court; that said claim is as follows, to wit: he requested said officers of said company to purchase supplies of wood for said eastern division, for the use of the locomotives, and to deliver the same on the track; that he was
133 to pay for the same as he should use it; that a large amount, to wit, 4,375 cords, of said wood so purchased by said com

pany was on said track at the time possession of the said road was delivered as aforesaid to said Milwaukee and Minnesota R. R. Co.; that he is informed and believes that said Minnesota company have not paid for said wood, or made any arrangement for it, but have, notwithstanding, principally used the same for fuel in operating said road, since the receiver surrendered possession as aforesaid; that said St. Paul company claim that as they delivered said wood upon the track at his request, and for the purposes of said eastern division, and that as possession, in fact, passed to said Minnesota company with the track of said eastern division, they are entitled payment of the value of said wood, at $2 75 per cord, from the receiver.

Balance of account.

Hans Crocker, receiver,		Dr.
To balance on hand Feb. 28th, A. D. 1866		$62,892 51
To am't rec'd from the Mil'w and St. Paul R'way Co., as above stated		48,789 16
		111,681 67
	Cr.	
By am't of liabilities on suits	$25,000 00	
By paid out since Feb. 28, 1866	10,158 28	
By am't allowed to him by the court for services up to Feb. 28th, A. D. 1865	38,569 42	
By am't of his salary as fixed by the court, from Feb. 28th, 1865, to April 10th, 1866	5,555 64	
By unliquidated and contingent claims, estimated at	3,000 00	
		82,283 24
		29,398 43

MILWAUKEE COUNTY, *ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing statements are correct to the best of his knowledge, information, and belief.

H. CROCKER.

Sworn to before me, this 12th day of April, A. D. 1866.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

134 And came the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its exceptions to said report as follows:

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company.

The Milwaukee and Minnesota Railroad Company excepts to the following items credited by the receiver to himself, in the statement this day filed, viz:

By amount of liabilities on suits	$25,000 00
By paid out since Feb. 28, 1866	10,000 00
By amount allowed to him by court for services up to Feb. 28	38,569 42
By am't of his salary as fixed by the court, from Feb. 28, 1865, to April 10, 1866	5,555 54
By unliquidated and contingent claims, estimated at	3,000 00

Said defendant also excepts to the items in said statement as follows, viz:

To balance on hand Feb'ry 28th, A. D. 1866	$62,892 51
Am't received from Mil. and St. Paul R'way Co., as above stated	48,789 16
	$111,681 67

MATT. H. CARPENTER,
Sol. for the Mil. & Min. R. R. Co.

And on motion of the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, ordered that the statement of the receiver in this cause, and the exceptions thereto, be referred to H. L. Palmer, esq., auditor, with directions to examine the same, and the proofs and vouchers offered in support of said statement and said exceptions, and report thereon by Monday morning next.

And came the receiver, by his counsel, and filed his petition, praying to be allowed to retain in his hands funds to secure him against contingent liabilities, as follows, viz:

135 Circuit court of the United States for the district of Wisconsin, in chancery.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

DISTRICT OF WISCONSIN, *ss:*

Daniel Wells, jr., being duly sworn, deposeth and saith that he is personally acquainted with A. C. Gunnison, formerly cashier of the

Market Bank of Troy, and is generally acquainted with his circumstances and his reputation for solvency, and that from said acquaintance, and from statements made to the affiant by those who stood in intimate business and personal relations with said Gunnison, he (the affiant) believes said Gunnison to be insolvent and wholly irresponsible.

DANIEL WELLS, JR.

Sworn and subscribed before me, this twelfth day of April, 1866.
[SEAL.] JOHN JOHNSTON,
Notary Public, Milwaukee Co.

[5-cent stamp, cancelled.]

United States circuit court, ninth circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD.

To the hon. the judges of said court:

The petition of Hans Crocker, receiver of the La Crosse and Milwaukee railroad, respectfully represents that by an order of this court of 18th July, 1865, the Milwaukee and Minnesota Railroad Company was required, before taking possession of the road, to execute its bond to the undersigned in the sum $25,000, with sufficient sureties
136 to indemnify him for contingent liabilities mentioned in the report of the auditor in this case; that on the 9th day of January, 1866, the said company filed its bond with the clerk of this court for the purposes mentioned in said order, with William R. Griffith, Albert C. Gunnison, and Alexander Fleming as sureties, which said bond was executed in the city of New York.

This petitioner further represents that the said railroad company is insolvent, the liens upon the same amounting to more than the value of the road. It is true that, since the 9th day of January, responsible and wealthy men (as is reported) have become interested in this road. But this petitioner is not aware that they have in any any way made themselves liable to pay the debts of the company, or that they could in any way be compelled to pay any judgment he might receive on the above bond.

This petitioner further represents that he is informed and believes that all of said sureties reside in the State of New York, and without the jurisdiction of this court; that as to Mr. Griffith's responsibility he knows nothing, but as to Gunnison and Fleming, he is informed and believes that they are insolvent, and that it would be impossible to collect on execution any demand against them.

Upon the filing of said bond, which was approved by the clerk of this court, the undersigned delivered to said company the possession of the eastern division of the La Crosse and Milwaukee railroad, although he believed, and now believes, that the bond referred to is worthless and no security whatever to him, and was not a compliance with the order of 18th July, 1865.

That on the 10th day of January he caused exceptions to be filed with the clerk of this court to the sufficiency of said bond.

This petitioner further represents that the contingent liabilities will amount to twenty-five thousand dollars, and perhaps a still larger sum. He therefore prays that he may be allowed to retain out of the funds in his hands at least the sum of twenty-five thousand dollars to meet such contingent liabilities.

H. CROCKER, *Rec.*

And came Alexander Mitchell and others, and filed their answer to the motion and petition of the Milwaukee and Minnesota Railroad Company for an attachment against them as follows, to wit:

137 Circuit court of the United States ninth circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The joint and several answer of Alexander Mitchell, president; S. S. Merrill, manager; A. Reasoner, superintendent; A. Cary, secretary and treasurer; and Washington Hunt, W. S. Gurnee, Frederick P. James, John W. Cary, Selah Chamberlin, Russell Sage, N. A. Cowdry, E. B. Wesley, Horace Galpin, David M. Hughes, and Daniel Wells, jr., directors of the Milwaukee and St. Paul Railway Company, and of the said Milwaukee and St. Paul Railway Company, to the motion and the application of the Milwaukee and Minnesota Railroad Company for an attachment as for contempt against said parties in this cause:

Your respondents, hereby protesting that the motions and proceedings of the said Milwaukee and Minnesota Railroad Company in this particular are not in accordance with the rules and practice of this honorable court in such cases made and provided, and that there is no cause or ground for an attachment as for contempt in the said several matters and things in the said motion and papers annexed contained, and saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies therein contained, for answer thereto say:

First. That said order of July 18th, 1865, in said motion papers mentioned and contained, is not such an order or decree of this honorable court as can be enforced by process of attachment as for contempt, for the reason that there is no time limited in said order within which performance thereof was to be made, as is required by the rules and practice of this court in such cases established.

Second. That said order of July 18th, 1865, was conditional in its terms and nature, and required the delivery to the Milwaukee and Minnesota Railroad Company upon the condition that the said Milwaukee and Minnesota Railroad Company should first pay a certain amount of money into court, and do and perform certain other

138 acts, the performance of which were conditions precedent to the delivery to said railroad company as provided in said order, and that for that reason a further order of this honorable court was required, after the pretended performance by said Milwaukee and Minnesota Railroad Company on its part, judicially determining such performance and fixing a time within which delivery should be made to said Milwaukee and Minnesota Railroad Company in pursuance of said order, in order to found thereon proceedings as for a contempt, for a failure to comply therewith.

Third. Your respondents above named respectfully show and state that as they are advised and believe said Milwaukee and Minnesota Railroad Company never complied with the order of July 18th, 1865, of this court, in this cause, set forth in its said application so as to entitle it to the possession of the railroad therein named, or of any part or portion thereof, or of the rolling stock therein named, in that said Milwaukee and Minnesota Railroad Company did not comply with that portion of said order which required "that before said Milwaukee and Minnesota Railroad Company should be allowed and permitted to enter into possession as aforesaid, it should make, execute, and file with the clerk of this court a bond to the United States in the penal sum of twenty-five thousand dollars, with sufficient surety, to pay to Sebre Howard and Selah Chamberlain, or the owners of said judgments, or either of them, all such sums as may come into the hands of said company which shall hereafter be found to be rightfully applicable to the payment of their claims, if they shall be established as liens upon said road;" that there never was any other compliance therewith than the pretended execution, in the city of New York, of the paper writing in document A, attached to said motion, purporting to be the bond of said railroad company, with Wm. R. Griffith, A. Fleming, and A. C. Gunnison as sureties; that said Wm. R. Griffith, A. Fleming, and A. C. Gunnison were at the time of executing the same, and now are, citizens and residents of the State of New York; that as your respondents verily believe and are informed said Fleming and Gunnison were at the time of executing said bond, and ever since have been and now are, utterly
139 and entirely irresponsible for any sum whatever, and that so they are respected and esteemed, and that said Griffith is a stranger to your respondents; but that, on inquiry made in the city of New York, where he is said to reside, they are unable to ascertain that he has any reliable means or property, and that he is not responsible for any amount. That when said pretended bond was presented to the clerk of this court for his approval, on the 9th day of January, 1866, and before its approval, John W. Cary, above named, on behalf of the Milwaukee and St. Paul Railway Company, and Fred. P. James, the owners of the Chamberlain and Howard judgments, appeared before said clerk, and then and there objected to the reception or approval of said bond, in writing, now on file in this court, in the words and figures following, to wit:

United States circuit court, 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

And now comes the Milwaukee & St. Paul Railway Company, the owner of the Chamberlain judgment, and Fred. P. James, the owner of the Howard judgment mentioned in the order of this court of July, 18, 1865, by John W. Cary, their solicitor, and excepts to the bond of the Milwaukee & Minnesota Railroad Company and the sureties thereto, filed in pursuance of said order, to account for the net earnings of said railroad, and objects to the approval thereof by the clerk of the court.

First. Because said sureties are not citizens or residents of the State and district of Wisconsin.

Second. Because said sureties are wholly irresponsible, and unable to respond to the penalty of said bond.

And the said Milwaukee & St. Paul Railway Company and said Fred. P. James hereby demand an oral examination and justification by said sureties on oath before said bond shall be approved by the clerk of this court.

JOHN W. CARY,
Sol. for said M. & St. P. R'y Co.
FRED. P. JAMES.

140 That said clerk then and there assumed authority to refuse said demand for an oral examination and justification and to overrule said exceptions. And your respondents state that as they are advised and believe that said bond and the proceedings thereon are void and no compliance with the order of this court.

1st. Because it was not competent for said railroad company to execute said bond without the bounds of said State.

2d. Because the sureties therein named are not residents or citizens the State and district of Wisconsin, but are residents of the State of New York.

3d. Because said sureties being officers and directors of said railroad company, and being themselves entirely irresponsible, was notice to said railroad company of its insufficiency, and its presentation to the clerk for his approval by said railroad company was, therefore, a fraud upon the court and the parties interested, and was not a compliance with said order.

4th. Because the clerk is not a judicial officer, and his approval did not operate to change the character of the bond, and, if the bond was not such as the law required, his approval could not cure it, but would leave it invalid still.

Your respondents, therefore, submit that said railroad company did not comply with said order of July 18, 1865, and were not entitled to the possession of said road or rolling stock, or any part or

portion thereof, and that this proceeding should, for that reason, be dismissed.

Fourth. Your respondents further show that since the first day of May, 1864, up to the time when the Milwaukee & Minnesota Railroad Company took possession of the eastern division of said La Crosse railroad, the rolling stock purchased by the receiver has been and then was in the joint possession of the Milwaukee & St. Paul Railway Company and Hans Crocker, the receiver of said eastern division, and that the same was owned jointly by said railway company and the owners of the eastern division of said La Crosse & Milwaukee railroad. That the proportion thereof belonging to the Milwaukee & St. Paul Railway Company was such proportion of the whole thereof as the net earnings of the western division of said La Crosse railroad bore to the net earnings of the eastern divi-
141 sion thereof, while the whole road was operated by the receiver, prior to the sale of the said western division, which proportions were fixed by said order of July 18th, 1865, in value as $26,199 to the Milwaukee & St. Paul Railway Company, to $121,178 to the eastern division, but that no valuation or division of said rolling stock was made by said order, or in any other manner, and that no valuation or division thereof had ever been made. That during the whole time, from May 1, 1864, to the 20th day of January, 1866, when the Minnesota company took actual possession of the said eastern division, said rolling stock, so purchased by the receiver, was used in common with the rolling stock of the Milwaukee & St. Paul Railway Company on the said eastern division, and on the Milwaukee & St. Paul Railway Company's road, under the arrangement made between the receiver and said railway company, and such portion of said rolling stock as was on said eastern division when said railroad company took possession was left there. That afterward, and on the 27th day of January, 1866, the Milwaukee & St. Paul Railway Company received from Hans Crocker, receiver, a notice in writing relative to said rolling stock in the words and figures following, to-wit:

MILWAUKEE, *January* 20, 1866.

S. S. Merrill, esq., superintendent of the Milwaukee & St. Paul Railway Co.:

DEAR SIR: In obedience to the order of the circuit court of the United States for the district of Wisconsin, I have this day surrendered to the Milwaukee & Minnesota Railroad Company the eastern division of the La Crosse railroad, with all the personal property and rolling stock then in my possession as receiver; the order further requires your company and myself to surrender such original rolling stock as I received under the appointment in the land grant case, and Howard case, and which I surrendered to you under the order of court in the land grant case. I, therefore, demand possession of all said rolling stock for the purpose of surrendering the same to the Milwaukee & Minnesota Railroad Company. Said order further re-

quires me to deliver a part of certain property enumerated in the order (copies of which have been served upon your company) to the said Milwaukee & Minnesota Railroad Company, and part to your company. As a portion of last-mentioned stock has, in operating the eastern division and making connections with the western,
142 been necessarily run upon your division, and in fact been claimed by you as rightfully in your possession under orders of the court, I now demand the same of you for the purpose of delivering the same as required by said orders, and request that you and said company voluntarily agree upon a fair division, if not, I must take the responsibility of dividing said stock as justly and as much in accordance with the interests of both companies as I can.

Yours, &c.,

H. CROCKER, *Receiver.*

Which was the first demand or request of any kind or description made upon said Milwaukee and St. Paul Railway Company for said rolling stock. That on the day of the receipt of said communication from said Hans Crocker, receiver, the Milwaukee and St. Paul Railway Company answered the same in writing as follows, to wit:

MILWAUKEE, *January 27th*, 1866.

Hans Crocker, esq., receiver, &c.:

DEAR SIR: Your favor dated the 20th inst. is this day received.

We do not admit your exclusive possession of or right to divide the rolling stock purchased and built by you as receiver, consisting of eight locomotives, two passenger cars, one baggage car, six caboose cars, and one hundred and thirty-four freight cars. This rolling stock has, since the first day of May, 1864, been in the joint possession of yourself and this company. The order of July 18th, 1865, entered by the circuit court of the United States in the case of Soutter, survivor, &c., *vs.* La Crosse and Milwaukee R. R. *et al.*, required that you should deliver to the Milwaukee and Minnesota company the proportion of said stock belonging to the eastern division, but made no provision for the division thereof.

It is therefore necessary for yourself and this company to make some division of it in order that you may be able to carry out the said order of the court.

For that purpose we propose a division as follows: you may take six of the eight locomotives, one of the two passenger cars, all the caboose, and one hundred and twelve of the one hundred and
143 thirty-four freight cars, subject to the further order of the court, or such arrangement as may be made between the parties interested to effect a more perfect and accurate division.

If this proposition is not satisfactory to you we should desire to receive one from you.

Of the locomotives so purchased by you, Nos. 22, 24, and 25 are now on the eastern division, and in possession of the Milwaukee and Minnesota co.; No. 36 (formerly 31) is at Portage, subject to your order, and Nos. 29 and 30 are now undergoing

slight repairs at our shop at Watertown, but will be at Portage on Thursday next subject to your order; one of the passenger cars and nearly all the caboose cars are now on the eastern division, and a considerable portion of the freight cars. The remainder of the freight and caboose cars will be delivered at Portage subject to your order as soon as they can be collected and brought there. The locomotives, Nos. 23 and 28, which we propose to retain are at our shops at Watertown, unfit for use and being repaired by this company.

The rolling stock that was on the road when you took possession as receiver on the 11th day of June, 1860, was, by an order of the court made in the land grant cause on the 12th day of June, 1863, delivered to this company as purchased under the decree in that case, and since that time has not been in your custody or under your control, but has been in the exclusive possession of this company. We must therefore decline to recognize your right as receiver to demand or receive from us any portion of said last-named rolling stock.

The title to this stock is now in litigation between this company and the Milwaukee and Minnesota company, and whenever the court shall have passed upon our right we shall cheerfully conform to its decision.

In the meantime, in order that the public may not be inconvenienced, and that the Minnesota company may have ample stock to operate said eastern division, we shall furnish of said rolling stock to said company sufficient in addition to their proportion of that purchased by the receiver to operate their road.

We have already furnished them from said original stock nine locomotives, and passenger and freight cars for the transaction
144 of their business, and shall furnish them all that may be necessary in addition to their proportion of that purchased by the receiver for the successful operation of said eastern division.

Yours, respectfully,

S. S. MERRILL,
General Manager.

No further communication was received from said receiver until on or about the 31st of January, 1866, when the Milwaukee and St. Paul Railway Company received the following proposition from him, to wit:

MILWAUKEE, *January* 31, 1866.

S. S. Merrill, esq., manager of the M. & St. P. R. R. Co.:

DEAR SIR: I am desirous, as soon as possible, of making a division of the rolling stock purchased and built by me, and owned jointly by the eastern division of the La Crosse road and your company, upon the basis fixed by the court. I assume that in making this division, we must take the stock as it now is, and not as it was built or purchased by me. For the purpose of making the division, I propose that Mr. Dwight Goodrich and Mr. W. E. Kittridge shall estimate and return to me the value of this rolling stock at the present time, and upon receiving their return I will make a division as nearly just as I can.

You may object to these parties, as they are now in the service of the M. and M. R. R. Co. I have selected them, as they were in my service when this rolling stock was built and purchased, and both being competent and honest men, I think them best qualified to determine the value of this property. While I have the power to make an arbitrary division, I prefer to make one satisfactory to all parties.

Yours, etc.,

H. CROCKER, *Receiver.*

This proposition of the receiver was immediately, and on the same 31st day of January, 1866, accepted by the said Milwaukee and St. Paul Railway Company, in writing, as follows, to wit:

MILWAUKEE, *January* 31, 1866.

Col. H. Crocker, receiver:

DEAR SIR: Your favor of this date, in reference to division of rolling stock purchased by you, proposing to have D. Goodrich and W. E. Kittredge estimate the present value of each car, engine, etc., 145 and return the same to you, and that you make the division thereof, is received.

Your proposition is satisfactory, and we assent to it.

Yours, respectfully,

S. S. MERRILL,
General Manager.

Your respondents further show that said Goodrich and Kittredge were at the time of making and accepting said proposition in the employ of the said Milwaukee & Minnesota Railroad Company, one as master mechanic, and the other as superintendent of the car shop, and that they had formerly been in the employ of the said receiver and of the Milwaukee & St. Paul Railway Company in the same capacity, and were well qualified to estimate the value of said rolling stock.

Your respondents further show that they are now and ever since the said 31st day of January, when said proposition was accepted, have been ready and willing to submit to and carry out such disposition and division of that said rolling stock whenever the same shall be made by the receiver. That no proposition for a division thereof has ever been made to these respondents, or any of them, by the said Milwaukee & Minnesota Railroad Company, of any kind or description, and that no other proposition, except as above set forth, has ever been made to them for such division, and the respondents expressly deny that that have ever in any manner refused to comply with said order of July 18th, 1865, in relation to the rolling stock purchased by the receiver, but have at all times been willing to submit to any fair and just method of dividing the same on the basis fixed by the court in said order, and in all things and in all ways stand to and abide by said order while in force, relating to said rolling stock so purchased and built by the receiver, and so advised the Milwaukee &

Minnesota Railroad Company, as appears by the letter of S. S. Merrill, general manager, hereinafter set forth.

And these respondents further show that the whole amount of rolling stock purchased and built by the receiver, which was still in use on the 4th day of January, 1866, was as follows, to wit:

	Locomotive engines, (22, 23, 24, 25, 28, 29, 30, 31)	8
146	Passenger cars, (19 and 20)	2
	Baggage car, (No. 9)	1
	Box cars	224

That of this stock so purchased and built by the receiver, there has been delivered by respondents, Milwaukee & St. Paul Railway Company and said Hans Crocker, receiver, to the Milwaukee & Minnesota Railroad Company, the following locomotives and cars, to wit:

Locomotive engines, (Nos. 22, 24, 25, 29, 30, 31, new No. 36)	6
Box cars	155
Baggage car	1
Passenger coaches, (19 and 20)	2

And that the remainder of said stock is now in the possession of the Milwaukee and St. Paul Railway Company. That forty-three of the above-named box cars were flat cars, which were on the road when the receiver took possession on the 11th day of June, 1860, and were by the receiver changed into box cars, and six of the box cars that were on the road on the said 11th day of June, 1860, were by the receiver changed into caboose cars, and four of the box cars built or purchased by the receiver were used up in the service prior to the 4th of January, 1866.

Fifth. And your respondents, further answering as to the rolling stock which was on the road, and of which the receiver took possession on the 11th day of June, 1860, on information and belief, respectfully show unto this honorable court that all of said last-named rolling stock was covered by and included in the mortgage given by the La Crosse & Milwaukee Railroad Company to Green C. Bronson, James T. Soutter, and Shephard Knapp, and that the said receiver took possession thereof in virtue of his appointment in the foreclosure suit of said Bronson, Soutter, and Knapp against the La Crosse & Milwaukee Railroad Company and others, brought to foreclose the land grant mortgage above mentioned, in the district court of the United States for the district of Wisconsin; that the same was included in the decree of foreclosure and sale in that cause and directed to be sold; and that the same was sold by the marshal by virtue of the decree in that cause, on the 25th day of April, 1863, and conveyed
147 by him to Pratt and White on said sale; that said Pratt and White, on the 5th day of May, 1863, conveyed the same to the Milwaukee & St. Paul Railway Company, which said company thereby became the owner of all of said rolling stock, together with the western division of said railroad, all of which said rolling stock was then in

the hands of Hans Crocker as receiver; that afterwards, and on the 6th day of May, 1863, said Milwaukee & St. Paul Railway Company applied by petition to the said district court of the United States to be let into the possession of the property so purchased, and that the receiver be discharged therefrom. That said application was opposed by the Milwaukee & Minnesota Railroad Company, so far as it related to said rolling stock, and time asked to prepare to oppose the same; that thereupon, on the 7th day of May, 1863, the court granted said application so far as the same was not opposed, but required the Milwaukee & St. Paul Railway Company to operate the road jointly with the receiver, and continued the application for 30 days at the request of the said Milwaukee & Minnesota Railroad Company; that no possession was ever taken under the said order of May 7th, 1863, by the Milwaukee & St. Paul Railway Company, but the same remained in the exclusive possession and control of the said receiver; that afterwards, and on the 11th day of June, 1863, said Milwaukee & Minnesota Railroad Company filed its answer to said application as to said rolling stock, (copies of which are hereto annexed, Exhibit No. 1,) and thereupon said district court made its order thereon in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in the said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863; present the Honorable Andrew G. Miller, judge of said court, presiding.

On the 18th day of the said term, to wit, on the 12th day of June, A. D. 1863, the following proceedings were had, to wit:

148 GREEN C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, I. Albert Helfenstein, trustee, *et al.*
} In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and of the argument of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St. Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road bed and tracks, with its depots, station-houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree; and also, subject to other or previous liens or claims, the possession of the rolling stock on hand when the receiver took the same under the order of the court.

And it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made, or to be made, in this cause, and in the other cases in which he was appointed or may hereafter be appointed.

And that thereupon, and in pursuance of said order, said rolling stock was delivered to said respondents, Milwaukee and St. Paul Railway Company as purchaser, as aforesaid, and from then until the making of said order of July 18th, 1865, remained in the exclusive possession of said railway company as the owner thereof under its purchase, as aforesaid, and not otherwise, and that said order of the 12th of June, 1863, remains in full force and unreversed. That said Milwaukee and St. Paul Railway Company was not, and never has been, a party to this suit, either complainant or defendant; that it was never impleaded in this cause in respect to this rolling stock; that no issue was ever formed relative thereto in this cause, and that said respondent, Milwaukee and St. Paul Railway Company, never had an opportunity to establish its rights thereto, or to contest the claim or rights of the said Milwaukee and Minnesota Railroad Company
149 thereto in this cause; and that, therefore, the said order of July 18th, 1865, so far as it assumed to divest said respondent, Milwaukee and St. Paul Railway Company, of the possession or ownership of said property, was, as these respondents are advised and verily believe, entirely without jurisdiction and void, and that if executed and enforced, it would operate to deprive the respondent, Milwaukee and St. Paul Railway Company, of its property without due process of law; your respondents, therefore, humbly and respectfully submit to this honorable court that said order of July 18th, 1865, so far as it required said respondent, Milwaukee and St. Paul railway, to deliver said rolling stock so on said railroad when said receiver took possession thereof on the 11th day of June, 1860, and so as aforesaid delivered to said railway company under the aforesaid order of the district court of June 12th, 1863, was without jurisdiction and void, and therefore not binding upon these respondents, and that a failure on their part to comply with its terms did not render them liable to be proceeded against as for a contempt of the order of this honorable court.

Sixth. Your respondents further show that at the time said order of the 18th of July, 1865, was made, there was a suit pending in this court, brought by the said Milwaukee and Minnesota Railroad Company against this respondent, Milwaukee and St. Paul Railway Company and others, by way of supplemental bill to the aforesaid foreclosure suit of Bronson, Soutter, and Knapp, in which said supplemental bill it was set forth that said respondent, the Milwaukee and St. Paul Railway Company, was in the possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, claiming it as owner under said foreclosure purchase, and said supplemental bill prayed, among other things, that said

Milwaukee and Minnesota Railroad Company might be declared by the decree of this honorable court the owner of all the rolling stock that was on the whole La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except forty box cars, specially mentioned and described, which said bill had then been answered by said respondent, Milwaukee and St. Paul Railway Company, setting up its title under the foreclosure proceedings aforesaid, and was then at issue; that after the making of said order of the 18th day of July, 1865, your respondents learned of the existence of a cer-

150 tain supplemental mortgage executed on the 4th day of September, 1857, by the La Crosse and Milwaukee Railroad Company to said Bronson, Soutter, and Knapp, in pursuance of the covenants for further assurance contained in said land grant mortgage, and as a further security to the bonds issued under it, which said mortgage expressly mortgaged and conveyed to said Bronson, Soutter, and Knapp, as trustees, all of said rolling stock on the La Crosse railroad of which the receiver took possession on the 11th day of June, 1860.

And your respondents further show that there was was a deficiency on the sale on said land grant foreclosure suit of Bronson, Soutter, and Knapp, on the 25th day of April, 1863, amounting to $1,129,201, which amount still remains due and unpaid on said bonds, with interest; and that the whole of said bonds and indebtedness secured thereby, excepting the sum of about $25,000, were, on the 5th day of May, 1863, sold, assigned, transferred, and delivered to said respondents, Milwaukee and St. Paul Railway Company, and ever since they have been, and now are, owned by said company in its own right; and that, in virtue of said supplemental mortgage, said Milwaukee and St. Paul Railway Company, if not the owner of said rolling stock by virtue of the sale on said foreclosure proceedings, was, at least, entitled to be regarded and treated as a mortgagee thereof, rightfully in possession, and that its possession could not be disturbed except by paying the balance due on said mortgage; that immediately on learning the existence of said supplemental mortgage, and at the September term, 1865, of this honorable court, your respondent, the Milwaukee and St. Paul Railway Company, amended its answer to said supplemental bill setting up said supplemental mortgage and its rights thereunder as a mortgagee in possession to said rolling stock, and at the same time filed a motion to modify said order of 18th July, 1865, founded on its petition setting forth said supplemental mortgage and the record in the cause, a copy of which said motion and petition are hereto attached as Exhibit No. 2, and which your respondents pray may be taken and made a part of this answer, which said motion was still pending and undetermined in this court until the present term of this court.

And your respondents further show that James T. Soutter

151 and Shepherd Knapp, survivors, &c., of Green C. Bronson, deceased, trustees, have, by the leave of this honorable court, filed a cross bill to said supplemental bill to foreclose and enforce said supplemental mortgage, which is now pending for hearing at this term of this honorable court.

Your respondents, therefore, submit that as they are advised by their counsel, and verily believe, that if said order of July 18th, 1865, is binding and obligatory upon the respondent, Milwaukee and St. Paul Railway Co., in regard to said rolling stock of which the receiver took possession the 11th day of June, 1860, yet the facts and proceedings subsequently occurring were sufficient to excuse a compliance therewith by said Milwaukee and St. Paul Railway Company in respect to said rolling stock, and that its failure so to do is not contempt or disobedience of the orders of this honorable court.

Your respondents further show that on day of November, 1865, the respondent, the Milwaukee and St. Paul Railway Company, in due form of law, took an appeal from so much of said order of July 18th, 1865, as directed it to deliver to the Milwaukee and Minnesota Railroad Company the rolling stock which was on the La Crosse and Milwaukee railroad when the receiver took possession of the same on the 11th day of June, 1860, to the Supreme Court of the United States, and the same is now there pending as number 314 of December term, 1865.

Your respondents further show that they were advised by their counsel, and verily believe, that said order of July 18th, 1865, so far as it related to the rolling stock on said road on the 11th day of June, 1860, was not binding and obligatory upon the respondent, the Milwaukee and St. Paul Railway Company, and that a surrender of said rolling stock so as aforesaid in the possession of the Milwaukee and St. Paul Railway Company might endanger or defeat its right thereto under its purchase on the land grant foreclosure as aforesaid, and oust said railway company of its rights as mortgagee in possession under the said supplemental mortgage, and impair, if not entirely defeat, its claim by the foreclosure on the said cross bill of said supplemental mortgage, and that upon that advice and under the belief that its rights would be thereby impaired, if not lost, your respondent, Milwaukee and St. Paul Railway Company, declined to com-
152 ply with the terms of said order of July 18th, 1865, so far as the same related to the rolling stock in its possession which was on the road the 11th day of June, 1860.

But that your respondent, the Milwaukee and St. Paul Railway Company, from deference to this honorable court, and in order that the interests of the public might not suffer during the pendency of the litigation relating to said rolling stock, and in order that the said Milwaukee and Minnesota Railroad Company might be enabled to operate its said road, determined of its own motion to deliver as its own property to said Milwaukee and Minnesota Railroad Company sufficient of said rolling stock, with that purchased by the receiver, belonging to the eastern division of said La Crosse railroad, to enable said Minnesota company to operate its road, and in pursuance of such determination, and in order that said railroad company might understand the position of your respondent, Milwaukee and St. Paul Railway Company, replied to the demand of said Minnesota company for the possession of said rolling stock in writing, as follows:

OFFICE OF THE MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
Milwaukee, January 29th, 1866.

To the Milwaukee and Minnesota Railroad Company:

Your printed demand upon this company for the delivery to A. Fleming of all the rolling stock mentioned in the order of July 18th, 1865, entered in the case of James T. Soutter, survivor, *vs.* La Crosse and Milwaukee Railroad Company and others, in the circuit court of the United States for the district of Wisconsin, is this day received.

The rolling stock mentioned in said order purchased by the receiver, consisting of eight (8) locomotives, two (2) passenger cars, one (1) baggage car, six (6) caboose cars, and one hundred and thirty-four (134) house freight cars, has never been divided, but since the first day of May, 1864, has been in the joint possession of the receiver and of this company, and is owned jointly by this company and the eastern division of the said La Crosse and Milwaukee railroad.

The order of July 18th, 1865, requires the receiver to deliver a certain undivided proportion of said rolling stock to you, but provides no way or means of making a division or specifying the particular locomotives or cars to be delivered.

153 A portion of the stock has already been delivered to you by the receiver, to wit: three (3) locomotives and a large number of cars. One of the locomotives is now at Portage subject to the order of the receiver, and the remaining four (4) are in our shops at Watertown undergoing repairs. Two of them will be at Portage this week under the control of the receiver, and the cars on our line are being collected as rapidly as possible at Portage, so that the proportion belonging to the eastern division may be delivered by the receiver.

In order to enable the receiver to deliver to you in severalty the proportion of said rolling stock belonging to the eastern division, we have proposed to him a division thereof subject to future review and correction by the court or by the agreement of parties interested, and are ready to co-operate with him in making a fair and equitable division thereof.

We claim no interest in or control over the proportion of rolling stock purchased by the receiver belonging to the eastern division, and will unite with the receiver in making a division of the stock so purchased, and furnish him every facility in our power, when divided, to make an immediate delivery thereof to you.

The rolling stock which was on the road June 11th, 1860, of which the receiver took possession, was, by the order of the district court made on the 12th day of June, 1863, in the land grant foreclosure suit, taken from the receiver and delivered to this company as purchaser thereof under the land grant decree, and the receiver was, as to said property, discharged, since which time this company has been in the exclusive possession thereof. The title of this stock is now in litigation between this company and you, which litigation is not yet determined. No order has been entered therein disturbing our possession. Whenever the court shall have disposed of the questions then

raised, and settled the title and ownership of said stock, we shall cheerfully conform to its decision.

In the meantime we would avoid so far as possible any inconvenience to the public or injury to you arising therefrom; we shall therefore furnish to you of said stock sufficient to enable you, with your proportion of that purchased by the receiver, to operate your road.

To that end we have already delivered to you, as our own property, nine (9) of said locomotives, together with passenger, mail, baggage, and freight cars, which are now in your possession, and should the stock already furnished you by us, together with the proportion of that purchased by the receiver belonging to you, prove insufficient to operate your road, we will furnish, in addition of said original stock,
an ample and more than sufficient quantity for that purpose;
154 and in case of a difference of opinion on the subject, we will
submit to the decision of any suitable and impartial umpire you may name.

Further than this we do not propose to deliver to you any part or portion of said rolling stock so on said road on the 11th day of June, 1860, but claim the same as of right, and legally and properly in our possession and under our control; and we are advised that the course above indicated is practically a full and complete compliance with said order of July 18th, 1865, so far as the same is obligatory or binding upon us.

Respectfully yours,

S. S. MERRILL,
General Manager.

Your respondents further show that of the rolling stock which was on the road on the 11th day of June, 1860, of which the receiver took possession, there was in existence and in the possession of the Milwaukee & St. Paul Railway Company on the 4th day of January, 1866, the following, to wit:

Engines	23
Box cars	212
Flat cars	77
Baggage do	6
Mail and express do	3
Passenger coaches	15

That of this stock the Milwaukee & St. Paul Railway Company, on the said 29th day of January, 1866, and as soon thereafter as practicable, at different times, with the view above stated, delivered to the Milwaukee & Minnesota Railroad Company the following, to wit:

Engines	9
Box cars	10
Flat do	24
Baggage do	3
Mail and express do	3
Passenger do	6

And also at the same time delivered to said Milwaukee and
155 Minnesota Railroad Company thirty-eight box cars built or purchased by the Milwaukee and St. Paul Railway Company.

Your respondent further shows that there has been delivered to the said Milwaukee & Minnesota Company, by your respondent, Milwaukee and St. Paul Railway Company, and the said receiver, from the different classes of rolling stock which was in the possession of the Milwaukee and St. Paul Railway Company and said railway company and said receiver on the 4th January, 1866, a total amount of rolling stock as follows, to wit:

Engines	15
Box cars	203
Flat do	24
Baggage do	4
Mail and express do	3
Caboose do	6
Passenger do	8

And that exhibit No. 3, hereto annexed, contains a particular description of the rolling stock so delivered.

That the road of said Milwaukee & Minnesota Railroad Company is ninety-five miles in length, and that the rolling stock last above named is ample and sufficient for its operation and more than can be used thereon to advantage, or than is required for the transaction of all the business done on said road or than ever has been furnished by the country tributary thereto, and that, as your respondents are informed and believe, the Milwaukee and Minnesota company has suffered no damage or inconvenience from not having a larger amount of rolling stock.

Your respondents, further answering, say that the whole of said rolling stock mentioned in the order of July 18th, 1865, was not required for the operation of the road of the said Milwaukee and Minnesota company, and that it could not all be profitably used thereon, that the said road is encumbered with mortgages and judgments far beyond its real value, and that the net income arising therefrom is insufficient to pay the interest on its mortgage debt, and that said Milwaukee and Minnesota Railroad Company is insolvent and irresponsible, and that your respondents were apprehensive and had
reason to fear, and did fear, that it was the intention of said
156 Milwaukee and Minnesota Railroad Company to remove a portion of said rolling stock from said road and dispose of the same beyond the jurisdiction of this honorable court; and such your respondents now believe will be the case if the whole of said rolling stock should be placed in their possession and control; and your respondents, further answering, deny that they have been or are guilty of contempt of the orders or authority of this honorable court, or that they, or either of them ever designed or intended to disobey or contemn its authority, but that they were advised by counsel and verily believe that under the circumstances of the case, the said

Milwaukee and St. Paul Railway Company were not required in equity and good conscience, or by the spirit and true intent of the order of July 18th, 1865, to make delivery of said rolling stock until the further order of this honorable court; that all your respondents verily believe that said railway company was the owner of said rolling stock, and entitled to its possession, and that the delivery thereof to the Minnesota company would work a great wrong and injury to the said Milwaukee and St. Paul Railway Company, and seriously discommode the public while no good purpose would be thereby subserved.

Your respondents humbly submit that inasmuch as the ownership and title to said rolling stock is in dispute and unsettled, and can only be determined in the said cause brought and pending for that purpose, and said Minnesota company is now in possession of all that and more rolling stock than can be used to advantage or profitably on its road; that instead of making another order for enforcing the said order of July 18th, 1865, it would be safer, more equitable, and tend more to preserve the rights of all parties that the court should make its order requiring each of said companies to give security, to be approved by this court, or a judge thereof, to abide by and perform the final order or decree of this court relative to said rolling stock, and to account for its use to the parties finally entitled thereto.

And your respondents humbly pray to be hence dismissed with their reasonable costs wrongfully sustained.

The Mil. and St. Paul R'y Co.—

By ALX. MITCHELL, *P't.*
ALX. MITCHELL.
N. A. COWDRY.
S. S. MERRILL.
JOHN W. CARY.
157 DANIEL WELLS, JR.
A. REASONER.

Milwaukee, 12th April, 1866.

JOHN W. CARY,
Solicitor for Respondents.

DISTRICT OF WISCONSIN, *ss:*

On this twelfth day of April, A. D. 1866, personally appeared before me Alexander Mitchell, N. A. Cowdry, S. Merrill, John W. Cary, Daniel Wells, jr., and Andrew Reasoner, named in and who have signed the forgoing answer, and severally made oath that they and each of them had heard read the said answer by them subscribed, and that they know the contents thereof, and that same is true of their own knowledge, except as to the matters therein stated to be upon their information and belief; and as to those matters they believed the same to be true.

J. M. MILLER,
U. S. Commissioner Dist. of Wisconsin.

Exhibit No. 1.

District court of the United States, district of Wisconsin.

GREEN C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
against
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.
} In equity.

The answer of the Milwaukee & Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, three of the defendants in the above-entitled cause, to the petition of the Milwaukee & St. Paul Railway Company, filed in the above-entitled cause on the 6th day of May, A. D. 1863:

These defendants, saving and reserving unto themselves all and all manner of benefit and advantage of exceptions to the many irregularities, uncertainties, and insufficiencies of said petition, and protesting that this court has no jurisdiction to hear said petition, for answer thereunto, or unto so much and such part thereof as is or are material to be by them answered unto, answering say that they have no knowledge, information, remembrance, or belief as to whether the said Milwaukee & St. Paul Railway Company is a corporation, and can neither admit nor deny the same, but leave such petitioner to such proof in that behalf as it may be able to make. These
158 defendants admit that Hans Crocker is receiver of the eastern division, so called, of the Milwaukee & La Crosse railroad, so called, but say that he was not appointed such receiver in the above-entitled cause, but was so appointed in a cause in favor of Bronson and Soutter, as complainants, against the La Crosse & Milwaukee Railroad Company and others, defendants, which action was a suit in equity to foreclose a mortgage on said eastern division, and in a suit in favor of one Howard against said last-named company and others. These defendants deny that the said mortgage mentioned in the bill of complaint in this cause mortgaged or created a lien upon the whole franchise of said La Crosse & Milwaukee Railroad Company, to use, operate, manage, and control said La Crosse & Milwaukee railroad for its entire length from the city of Milwaukee to the city of La Crosse, and deny that said mortgage is prior and superior to all or any claims, liens, or encumbrances on said eastern division, and state that said mortgage did not in terms, nor was it intended to create any lien or encumbrance whatever upon said eastern division of said railroad, or of the franchise of said La Crosse & Milwaukee Railroad Company, to use, manage, operate, and control said eastern division, but that, on the contrary thereof, the premises, as to franchises conveyed in said mortgage, are conveyed only by the following words and description, that is to say: "And all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description, relating to said road;" meaning the following

roads, that is to say, from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse. And these defendants deny that said petitioner has in any way become entitled to use, manage, or operate said eastern division of said railroad from Milwaukee to Portage, or any part thereof. These defendants further say that the said mortgage did not convey or mortgage, and was not intended to convey or mortgage, any of the rolling stock of said La Crosse & Milwaukee Railroad Company pertaining to said eastern division; and these defendants submit that rolling stock is not a franchise; and these defendants, on information, advice, and belief, state that there is no rolling stock covered by the said mortgage, unless it be the forty box cars mentioned in the order of the court upon the master's report.

MATT. H. CARPENTER, *Solicitor.*

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming being first duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, and makes this verification on its behalf; that he has heard read the foregoing answer and knows its contents, and that the same is true of his own knowledge.

A. FLEMING.

159 Subscribed and sworn to before me, this 7th day of May, A. D. 1863.

J. M. MILLER, *Clerk.*

Re-sworn to before me, this 11th day of June, A. D. 1863.

EDWARD KURTZ,
U. S. Com., Dis. of Wis.

And on the same day came the Milwaukee & Minnesota Railroad Company, and Lawrence G. Graham, and Donald D. Scott, by their solicitor, Mr. Carpenter, and filed the following, viz:

District court of the United States for the district of Wisconsin.

GREEN C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp,
vs.
THE LA CROSSE AND MILWAUKEE R. R. COMpany and others.

Here in court comes the said Milwaukee and Minnesota Railroad Company, Lawrence G. Graham, and Donald D. Scott, and protesting that the rights of the parties as to rolling stock is already res adjudicata between the parties to this suit, and that this court has no jurisdiction over or right to hear and determine the said petition of the Milwaukee and St. Paul Railway Company, and protesting that a petition is not the proper proceeding to hear and determine the rights therein set forth, pray that, in case that said court shall be of

opinion that it has such jurisdiction, and that said right as to rolling stock claimed in said petition is not already res adjudicata as aforesaid, that it may be referred to a master or masters to take proofs as to the matter and things set forth, and the rights claimed in and by said petition to, and report thereon.

MATT. H. CARPENTER,
Solicitor for said Defendants above named, except said La Crosse and Milwaukee Railroad Company.

160 *Exhibit No. 2.*

Circuit court of the United States for the ninth circuit and district of Wisconsin:

JAMES T. SOUTTER, survivor, etc.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

And now comes the Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, and moves the court now here for an order modifying the order of July 18th, 1865, entered on confirmation of the auditor's report on motion of the defendant, Milwaukee and Minnesota Railroad Company, by striking from said order the words following, to wit: "and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees."

Also the following words, to wit: "together with all the rolling stock that was on the whole of the La Crosse and Milwaukee railroad, or belonged or appertained thereto, when the said receiver was appointed, except forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408," and insert in lieu of the portion last stricken out, the words "with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of said road," so as to make the same conform to the mandate of the Supreme Court, and to the rights and equities of the parties, which motion will be founded on the
161 petition of the Milwaukee and St. Paul Railway Company hereto attached, the record and proceedings in this cause, and the record and proceedings in the supplemental bill, and cross bill mentioned in said petition, and the following reasons are assigned for granting said motion:

1st. So that said order may conform to the mandate of the Supreme Court in this cause.

2d. Because the Milwaukee and St. Pail Railway Company was not a party to this suit at the time of granting said order, and not subject or amenable to the orders of this court in this cause, and the same, as to said company, is without jurisdiction and void.

3d. That said rolling stock was not within the jurisdiction and control of this court in this cause, or subject to its order.

4th. Because said supplemental mortgage, mentioned in the an-

nexed petition, covered and included this property, and its lien is prior and superior to the claim or right of said defendant, Milwaukee and Minnesota Railroad Company.

5th. Because said Milwaukee and St. Paul Railway Company is entitled to be treated as a mortgagee in possession under said supplemental mortgage, on the facts stated in its petition.

6th. Because, for the purposes of this proceeding, the title of the Milwaukee and St. Paul Railway Company, under the order of June 12, 1863, in the foreclosure suit of Bronson, Soutter, and Knapp, mentioned in said petition cannot be questioned.

7th. Because said rolling stock was covered by and included in the Bronson, Soutter, and Knapp mortgage of December 31st, 1856, the decree of the 13th of January, 1862, and the marshal's sale and transfer to the Milwaukee and St. Paul Railway Company.

8th. Because said order is contrary to equity and good conscience.

JOHN W. CARY,
Solicitor, and of Counsel for Milwaukee & St. Paul Railway Company.

To the honorable judges of the circuit court of the United States for the ninth circuit and district of Wisconsin:

Your petitioner, the Milwaukee and St. Paul Railway Company, respectfully shows:

162 That on the 31st day of December, 1856, the La Crosse & Milwaukee Railroad Company made their certain mortgage or deed of trust to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees, to secure bonds to be thereafter issued by said company, whereby they mortgaged to said trustees the line of their railroad and its appurtenances from Madison by way of Portage City to St. Croix river or lake, and from Portage City to La Crosse, together with all and singular its locomotive engines, cars, and rolling stock, and personal property which had then been or might thereafter be procured for or used on said roads, or either of them, that under said mortgage four millions of dollars in amount of bonds were issued; that default having been made on said bonds, said trustees, on the 5th day of December, 1859, filed their bill in the district court of the United States for the district of Wisconsin, to foreclose said mortgage or deed of trust, and such proceedings were thereafter had that Hans Crocker, esq., was, on the 18th day of May, 1860, appointed receiver therein; that he was subsequently, on the 7th day of June, 1860, appointed receiver of the whole road, subject to his prior appointment in the case of Sebre Howard, and that on the 11th day of June, 1860, he took possession of the whole road by virtue of his said appointments. That such proceedings were thereafter had in said forclosure suit that a final decree of foreclosure and sale was made on the 13th day of January, 1862, and afterwards, and on the 25th day of April, 1863, the premises were sold by the marshal, and the sale duly confirmed, and thereupon the purchasers formed your petitioner under and by virtue of the laws of the State of Wisconsin, and thereupon the whole mortgaged premises so sold were duly transferred to your

petitioner as owners. That on the 25th day of April said decree of foreclosure and sale amounted to the sum of $3,921,291; that the total proceeds of said sale were $2,800,000, and that after deducting said proceeds of sale from the amount due on said decree, there remained due and unpaid on said bonds secured by said mortgage as ascertained and fixed by said decree the sum of $1,129,201, and that said last amount, with interest thereon from the 25th day of April, 1863, still remains due and unpaid on said bonds, and that the whole of said bonds and said indebtedness secured thereby, (except-
183 ing about the sum of $25,000, which is mostly in the hands of unknown owners, or the bonds representing the same, have been lost or destroyed,) were, on the said 5th day of May, 1863, sold, assigned, transferred, and delivered to your petitioner, and ever since then have been and now are owned by your petitioner in its own right.

Your petitioner further shows that on the 6th day of May, 1863, your petitioner filed its petition to be let into the possession of the mortgage property so as aforesaid purchased by it, and in and by its petition, specially referred to the proceedings in said foreclosure suit, the sale and conveyance by the marshal and the subsequent conveyance to your petitioner, in and by which said sale and said conveyances all the rolling stock on said La Crosse road when the receiver took possession thereof on the 11th day of June, 1860, was sold, transferred. and conveyed to your petitioner; that the defendant, Milwaukee and Minnesota Railroad Company, appeared and resisted the granting of said petition, and filed an answer thereto specially denying the title of your petitioner to said rolling stock; that said petition was afterwards heard by the said district court, and on the 12th day of June, 1863, an order was made by said district court directing said receiver to let your petitioner into the possession of said railroad from Portage City to La Crosse, and all of said rolling stock that was on said road when the receiver took possession thereof, a copy of which order is hereto annexed as Exhibit No. 1. And your petitioner shows that it took said rolling stock under and by virtue of the aforesaid proceedings, as the purchaser thereof; that it ever since has held, and now holds said rolling stock as such purchaser, claiming to be the owner thereof, and insists that the proceedings aforesaid, and especially the proceedings on said petition and the order so as aforesaid made, are an adjudication upon the right, title, and claim of the said defendant, Milwaukee and Minnesota Railroad Company, to said rolling stock, and while it remains in full force and unreversed cannot be questioned or impeached by said defendant, Milwaukee and Minnesota Railroad Company, in this suit or any other collateral proceeding.

Your petitioner further shows that it so being in the possession of said rolling stock, and claiming to be the owner thereof, the said defendant, Milwaukee and Minnesota Railroad Company, on the 11th day of August, exhibited its supplemental bill of complaint to said foreclosure suit in this court against your petitioner, and James
164 T. Soutter and Shepherd Knapp, survivors of Greene C. Brown, deceased, trustees as aforesaid, and William Wallace Pratt

and William H. White, the purchasers at said foreclosure sale; that in and by said supplemental bill of complaint said defendant set out its title to the La Crosse and Milwaukee railroad, its rolling stock, and personal property, by virtue of a mortgage given by said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858, to William Barnes, the foreclosure thereof, and sale under the power and the organization, under the statute of Wisconsin, by the purchaser at said sale of the said defendant, Milwaukee and Minnesota Railroad Company, and that thereby said last-named company succeeded to all the property, rights, privileges, and franchises which were of the said La Crosse and Milwaukee Railroad Company on the 21st day of June, 1858; said supplemental complaint then set forth the foreclosure proceedings first above mentioned, and the organization of your petitioner; that your petitioner was in the possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, claiming it as owner under said foreclosure, purchase, and organization as aforesaid, and then prayed, among other things, that said defendant, Milwaukee and Minnesota Railroad Company, might be declared by the decree of this honorable court the owner of all the rolling stock that was on the whole La Crosse and Milwaukee railroad at the time of the appointment of the receiver, except forty box cars specially mentioned and described, and that an account might be taken of the use of said rolling stock by said Milwaukee and St. Paul Railway Company, and that said last-named company might be enjoined from using or in any manner interfering with said rolling stock, and for general relief; that process of subpœna was issued out of and under the seal of this honorable court, and such proceedings had that the defendants named in said supplemental bill of complaint appeared in said suit and answered, and the same is now pending and undetermined in this court, as by the said bill and other pleadings and proceedings in the said cause now remaining filed as of record in this court, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that, as it is advised and believed, said mortgage so as aforesaid given to said Bronson, Soutter & Knapp,
was intended to cover, and in fact did cover and include all the
165 locomotives, cars, engines, tools, and personal property which the
said La Crosse and Milwaukee Railroad Company then had, or which they might thereafter acquire, and that it did in fact cover and include, and was intended to cover and include, all the rolling stock and equipments which were on the road of said company on the 11th day of June, 1860, of which the receiver took possession; yet that after the giving of said mortgage said company became embarrassed in its financial operations, and some doubt and apprehension were felt by the bondholders under said mortgage as to whether said mortgage did in fact cover and include all the iron, locomotives, cars, engines, tools, and other personal property belonging to said company, and in order to solve said doubt, and to secure said property to the bondholders holding bonds issued under

said mortgage, so as aforesaid executed, application was made to the said La Crosse and Milwaukee Railroad Company to execute a supplemental mortgage thereon to said trustees as aforesaid for the further security of said bonds; that in pursuance of said request, and of the covenants and agreements contained in said indenture and mortgage so as aforesaid given to said trustees, said La Crosse and Milwaukee Railroad Company did, on the 4th day of September, in the year 1857, by resolution of its board of directors, authorize and direct the execution of such supplemental mortgage; and afterwards on the same day, said La Crosse and Milwaukee Railroad Company, in pursuance of said resolutions, and in consideration of the premises, and of one dollar to it in hand paid by said trustees, did grant, bargain, sell, convey, and confirm unto said trustees, Bronson, Soutter & Knapp, all and singular, about eleven thousand tons of iron rails, being all the iron rails purchased for and belonging to the said company, and lying at Milwaukee and elsewhere, along the line of the road of said company, or wherever the same or any portion thereof might be, and not actually laid down on the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description, belonging to the said company, wherever the same might be: To have and to hold the same to said trustees, their successors and assigns, upon the like trusts, terms, and conditions as are in the said mortgage or trust deed of December 31st, 1856, contained, with all the powers and authority therein granted, which said mortgage or deed of trust so as aforesaid executed, was afterwards, and on the fifth day of September, 1857, duly recorded in the office of the secretary of state of the State of
166 Wisconsin, as a mortgage, a copy of which said mortgage, and the resolution passed by the board of directors of said La Crosse and Milwaukee Railroad Company, authorizing the execution thereof, is hereto attached as Exhibit No. 2.

That at the time of the execution of said mortgage, on the 4th day of September, 1857, but $1,991,000 in amount of bonds had been issued under said mortgage of December 31, 1856, and that after the execution, delivery, and record of said mortgage of September 4, 1857, there was issued the further amount of bonds under said mortgages of $2,009,000, making in all issued under said mortgage the sum of $4,000,000.

That on the said 4th day of December, 1857, said La Crosse and Milwaukee Railroad Company was the owner and in the possession of about eleven thousand tons of iron rails, and of all the locomotives, cars, engines, tools, and personal property mentioned and described in the said bill of complaint, of which said Hans Crocker, esq., took possession, as receiver, on the 11th day of June, 1860; and that in and by said last-mentioned mortgage or deed of trust, the whole of said iron, locomotives, cars, engines, tools, and personal property were conveyed to said trustees as security for the payment of the bonds issued under the mortgage or deed of trust so as aforesaid given to said trustees, and bearing date December 31st, 1856, as aforesaid; that said iron rails were afterwards laid in the track of said railroad,

a part thereof on the eastern division and the remainder on the western division, and said rolling stock and other property was, from the giving of said mortgage of September 4th, 1857, until it was taken possession of by the said receiver, used on said road from Milwaukee to La Crosse, and that said mortgage last named is now, and ever since has been, a lien and encumbrance thereon, to the full amount of said bonds now remaining unpaid.

Your petitioner further shows, that in its answer to said supplemental bill of complaint, it has set up its right and title to said rolling stock under said mortgage so as aforesaid given by Bronson, Soutter, and Knapp, on the 31st day of December, 1856, the foreclosure thereof and sale by the marshal, and organization and conveyance to your petitioner and the aforesaid order of the said district court, giving your petitioner the possession thereof, under said foreclosure sale and purchase; and that in addition thereto your petitioner has set up the supplemental mortgage so as aforesaid given to said trustees,

167 that your petitioner is the owner of all the bonds issued under said mortgage so as aforesaid given on the 31st day of December, 1856, except the sum of about $25,000 in amount, and that the amount due and unpaid on said bonds, as fixed by said decree, is the sum of about $1,129,201, with interest from April 25th, 1863; that your petitioner is in possession of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, under the aforesaid order of the district court, made June 11th, 1863, and that all of said rolling was owned by and belonged to said La Crosse and Milwaukee Railroad Company on the 4th day of September, 1857, when said mortgage of that date was made by said company; and that under the circumstances your petitioner must be regarded and treated as a mortgagee in possession of said property, and that its possession thereof cannot be disturbed by the defendant, Milwaukee and Minnesota Railroad Company, except by a bill to redeem said property from said mortgage.

That said James T. Soutter and Shephard Knapp, survivors of Greene C. Bronson, trustees, have answered said supplemental bill of complaint setting up the mortgage or deed of trust of December 31st, 1856, the foreclosure thereof, the marshal's sale, the organization of and transfer to your petitioner, and the aforesaid order of the district court placing your petitioner in possession; and also setting up said mortgage or deed of trust of September 4th, 1857, their rights under the same; that said La Crosse and Milwaukee Railroad Company were the owners of all the rolling stock of which the receiver took possession on the 11th day of June, 1860, and now in the possession of your petitioner, on the fourth day of September, 1857, when said mortgage or deed of trust of that date was executed, and insisting that if said rolling stock was not included in the decree of January 13th, 1862, and sold by the marshal on the 25th of April, 1863, that it is covered by and included in the mortgage of September 4th, 1857, aforesaid, and should be subjected to the payment of the balance remaining due and unpaid on the bonds so as aforesaid issued under the mortgage of December 31st, 1856. And that said Soutter and Knapp, as sur-

vivors of said Greene C. Bronson, trustees, have also filed a cross bill to said supplemental bill, setting up the matters contained in their answer aforesaid, that by the mistake or inadvertence of the counsel who drew and prepared the original bill of foreclosure of the mortgage of December 31st, 1856, and without the knowledge
168 of said trustees, said mortgage of the 4th of September, 1857, was not pleaded or set up in said bill of foreclosure, and that it has never been foreclosed, that it now remains in full force, uncancelled and unsatisfied, and is a lien upon all of said rolling stock, prior and superior to the right or claim of the said Milwaukee and Minnesota Railroad Company, and praying for a foreclosure of said mortgage and for other relief.

That said supplemental bill, the answers thereto, and said cross bill are now pending and undetermined in this court, as by the record of said suit and the proceedings therein now remaining of record in this court, reference being thereunto had, will more fully and at large appear, and to which, for greater certainty, your petitioner prays leave to refer.

Your petitioner further shows that it is not a party, either complainant or defendant, in this action, as was decided by this court at the April term, 1864, and that it has no connection with or relation to it, except what arose from and grew out of the order of the 12th of June, 1863, entered by the said district court in this cause and in this court in the case of Sebre Howard *vs.* La Crosse and Milwaukee Railroad Company and others, and in the case of Bouton *vs.* the same company and others, modifying the order appointing Hans Crocker, esq., receiver in said causes, so as to allow your petitioner to operate the eastern division of the La Crosse and Milwaukee railroad, a copy of which order is hereto annexed as Exhibit No 3. That under and by virtue of said orders your petitioner was let into the possession of said eastern division of said La Crosse and Milwaukee railroad, and of that portion of the rolling stock purchased by the receiver belonging to said eastern division, but of no other property or rolling stock whatever; and from and after the 12th day of June 1863, until the first day of May, 1864, your petitioner, under and by virtue of said orders, operated said eastern division of said railroad as aforesaid, when said orders were rescinded by this honorable court; and thereupon your petitioner returned said road and rolling stock as aforesaid received to said Hans Crocker, receiver.

Your petitioner further shows that on the 28th day of April, 1864, an order was entered in this cause, as follows, to wit:

"This day ordered by the court that the receiver file in this
169 court a continuous monthly account of his receipts and disbursements asreceiver from the time of his appointment, including the receipts and disbursements of the Milwaukee and St. Paul Railway Company from the 12th of June, 1863, by the first day of June next, and that any person interested may examine the same and file exceptions thereto. And that H. L. Palmer, esq., be, and is, appointed an auditor to report on the same to the next term of this court."

That in pursuance of said order said receiver filed his continuous monthly account of his receipts and disbursements, including the receipts and disbursements of your petitioner, and that said report was excepted to, and that your petitioner appeared before said auditor to maintain said account so far as it related to your petitioner, but for no other purpose whatever; and that afterwards your petitioner appeared before this honorable court for the same purpose and filed exceptions to the report of said auditor, but that your petitioner never made any other appearance in this cause, and never had any other connection therewith, except as above; that there were no pleadings before said auditor, or in this court, so far as your petitioner was concerned, and no issue as to your petitioner's right and title to said rolling stock, and no opportunity for your petitioner to contest the claims of said Milwaukee and Minnesota Railroad Company to said stock, or to establish and maintain the rights and claims of your petitioner.

That said supplemental bill and cross bill, and the answers thereto, put that question directly in issue, and that that proceeding is the proper forum for the contestation of that title, but that it cannot be litigated in this suit.

Your petitioner further shows that said auditor reports that the order of the 12th of June, 1863, hereto attached as Exhibit No. 1, still remains in full force, and not reversed or rescinded, and that said rolling stock remained in the possession of your petitioner by virtue thereof: and then further reports "that under the adjudications made by the district and circuit courts in this case, and in the case of Bronson, Soutter, and Knapp against the La Crosse and Milwaukee Railroad Company and others, and by the Supreme Court of the United States in the case of the Milwaukee and Minnesota Railroad Co. *vs.* James T. Soutter, survivor, &c., that all of said rolling stock that was on said road on the 11th day of June, 1860,
170 except forty box cars, belongs to the owners of the eastern division of said road; and further reported that your petitioner should pay to said receiver the sum of $209,840 94 for the use of said rolling stock;" and that your petitioner excepted to said finding as to the ownership of said rolling stock, and to the amount reported as due the receiver for the use thereof, which exceptions were overruled, and your petitioner thereupon appealed to the Supreme Court and procured a supersedeas thereon.

And your petitioner further shows that on the confirmation of said report, the defendant, Milwaukee and Minnesota Railroad Company, procured an order to be entered in pretended compliance with the mandate of the Supreme Court, which your petitioner shows is not in compliance with said mandate, and as your petitioner is advised and believes is arbitrary and unjust, and improvidently and unadvisedly granted. That said mandate directs "that in case the amount due the complainants be paid into court, the receiver should be discharged, and the railroad from Milwaukee to Portage City, with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of said railroad, to

be delivered by said receiver to the Milwaukee and Minnesota railroad," upon certain conditions.

But said order, notwithstanding your petitioner was not a party to said suit, directs not only the receiver but your petitioner to deliver the eastern division and its appurtenances and rolling stock, but also the rolling stock and property delivered to your petitioner, under its aforesaid purchase, and which your petitioner claims to own in its own right, and which, if your petitioner does not absolutely own in its own right, it is entitled to the possession of as mortgagee in possession as above set forth. Your petitioner was advised and believed, and is still advised and believes, that its appeal so as aforesaid taken, and the supersedeas allowed thereon, operated as a stay, not only of the payment of the money so reported due the receiver, but also of the delivery of said rolling stock; but that it is now informed that said defendant (Milwaukee and Minnesota Railroad Company) insists that in case it pays the amount due the complainant that it will be entitled to the delivery to it of all the rolling stock which was on said railroad when the receiver took possession thereof, except
171 forty box cars specially mentioned; and your petitioner shows that said order is being unjustly and improperly used with a view to injury and oppress your petitioner, and with that view said Milwaukee and Minnesota Railroad Company have caused to be published in two of the daily newspapers of Milwaukee, and in the papers of Chicago and New York, the false, scandalous, and malicious libel and notice hereto attached and marked Exhibit No. 4.

Your petitioner therefore prays that said order of July 18th, 1865, entered on the confirmation of said auditor's report, on motion of the defendant, Milwaukee and Minnesota Railroad Company, may be modified by striking from said order the words following, to wit: "and the said Milwaukee and St. Paul Railway Company, its officers, directors, agents, and employees."

Also the following words, to wit: "together with all the rolling stock, that was on the whole of the La Crosse & Milwaukee railroad, or belonged or appertained thereto when the said receiver was appointed, except forty box cars, numbered as follows, viz: 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, 408," and insert in lieu of the portion last stricken out the words, "with all the appurtenances, rolling stock, and other property, real and personal, belonging to said division of said road," so as to make it conform to the mandate of the Supreme Court and to justice and equity between the parties.

Your petitioner further shows that but a small part of said rolling stock in addition to that purchased by the receiver and belonging to said eastern division could be advantageously used on said eastern division, while there is great and pressing need for its use on your petitioner's road, and that its removal therefrom would greatly discommode the public, and be a great and serious damage, not only to your petitioner, but to the whole community who are de-

pendent on your petitioner's railroad to transact their business and market their crops.

And your petitioner, as in duty bound, will ever pray, &c.

JOHN W. CARY,
Solicitor and of Counsel for Petitioner.

172 DISTRICT OF WISCONSIN, *ss:*

On this day of September, A. D. 1865, personally appeared before me Alexander Mitchell, and made oath that he is one of the officers of the Milwaukee and St. Paul Railway Company, the petitioner named in the foregoing petition, to wit: its president; that he has heard read said petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon the information and belief of said petitioner, and as to those matters he believes it to be true.

Exhibit No. 1.

Order of June 12th, 1863.—In western division.—Foreclosure cause.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the City of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863; present, the Honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of said term, to wit: on the 12th day of June, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, and Shepherd Knapp, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, J. Albert Helfenstein, trustee, *et als.*
} In equity.

On consideration of the said petition of the Milwaukee and St. Paul Railway Company, and the arguments of counsel, it is ordered by the court that there be delivered over to the said Milwaukee and St.

173 Paul Railway Company all and singular the railroad between the city of La Crosse and Portage City, its road bed and tracks, with its depots, station houses, and all other property belonging to said railroad between the said points, and the forty box cars mentioned and described in the decree.

And also the share or proportion of the rolling stock and personal property purchased by the receiver, as mentioned in the decree. And also, subject to other or previous liens or claims, the possesion of the rolling stock on hand when the receiver took the same under the order of the court; and it is further ordered by the court that the said receiver be, and hereby is, discharged as such from the management and control of the said western division of said

railroad under appointment in this case, subject, however, to the final settlement of his accounts, and subject to the orders made or to be made in this case and in the other cases in which he was appointed or may hereafter be appointed.

Exhibit No. 2.

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the president and secretary, which resolution was adopted by the board:

Resolved, That the president and secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, in behalf of this company, a further deed of trust or mortgage, of which the following is a copy, viz:

This indenture, made and entered into this 4th day of September, in the year of our Lord one thousand eight hundred and fifty-
174 seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did, on the 31st day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said party of the first part had determined to borrow, stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company for ten million dollars, of the date, tenor, and description in the said deed of trust particularly set forth, and payable, principal and interest, as therein provided; and whereas the said railroad company, in and by the said deed of trust, granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was, or thereafter might be, or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings of the said company, and other lands, buildings, and estate and property, real and personal and mixed, therein specially and particularly described, which conveyance was in and by the said deed of trust declared to be and was made to the said parties of the second part, and the survivors and survivor, successors and successor of them and their and his heirs and assigns in trust and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the

said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such right, title, interest, or estates, both legal and equitable, as said railroad company then had, or may thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed.

And whereas the said railroad company had, at the time of
175 the execution of the said deed of trust, or have since, acquired certain property, which was conveyed, or intended to be conveyed, thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired thereby [therein.]

Now, therefore, know all men by these presents, that the said parties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said parties of the second part all and singular about 11,000 tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all the singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts, and conditions, as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in, the said parties of the second party, in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company, described in the said deed of trust, at the date thereof.

And the said parties of the second part are hereby charged with all the duties in relation to the property hereby conveyed and the

sale and disposition thereof, and of the proceeds thereof, in case of sale thereof with which they are charged in relation to the
176 property conveyed, or in— * * * *
* * * * * road and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns as heretofore of his accounts into court, and disburse the moneys by him received from time to time in the payments of liens and debts of the said La Crosse and Milwaukee Railroad Co., according to their priorities and equities.

And it is further ordered by the court that before the said Milwaukee and St. Paul Railway Co. be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that the said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Co., and shall make monthly returns and pay over the net revenues of said road according to this order.

177 *Exhibit No.* 4.

Notice to all railroad companies, owners, or manufacturers of rolling stock, and all others whom it may concern:

OFFICE OF THE MILWAUKEE & MINNESOTA RAILROAD COMPANY,
New York, August 12th, 1865.

Take notice, that whereas, at the July term of the United States circuit court for the district of Wisconsin, held in the city of Milwaukee, orders were made by the said court, in obedience to the mandate of the Supreme Court of the United States, directing all the rolling stock (except forty box cars) that was on the road of the La Crosse and Milwaukee Railroad Company, when the receiver took possession of the same, and also the eastern division of said road, to be delivered to the Milwaukee and Minnesota Railroad Company, on thepayment of certain interest—the said rolling stock and the said eastern division being now in the possession of parties styling themselves the Milwaukee & St. Paul Railway Company: And whereas the said Milwaukee and St. Paul Railway Company has been, since the first day of September, 1864, using the said rolling stock to divert the travel and traffic to a competing route to the great injury of the Milwaukee and Minnesota Railroad Company, owner of the said rolling stock and the eastern division: And whereas, a suit for damages against the di-

rectors of the said Milwaukee & St. Paul Railway Company has been commenced by the Milwaukee and Minnesota Railroad Company, and said last-named company will shortly, in obedience to the orders above mentioned, pay into court the interest as directed, and take possession of the said rolling stock and road, in which event the said Milwaukee and St. Paul Railway Company will be left with little or no equipment, and threatens to lease its road, or lease, or hire, or in some other way procure rolling stock to be employed in the transportation of freight and passengers over the road formerly known as the western division of the La Crosse and Milwaukee railroad, and thence by way of Watertown to Milwaukee, thus diverting the
178 travel and traffic from the road of the Milwaukee and Minnesota Company, the successor to, and owner of all the rights, liberties, privileges, and franchises of the late La Crosse and Milwaukee Railroad Company, and as such successor and owner, alone legally entitled to the exercise of the rights, liberties, privileges, and franchises, particularly the transportation of freight and passengers over the said western division from La Crosse to the city of Portage, and from thence, by way of the road known as the eastern division of the late La Crosse and Milwaukee Railroad Company, to the city of Milwaukee: Now, therefore, notice is hereby given to all railroad companies, owners or manufacturers of rolling stock, and all whom it may concern, that the Milwaukee and Minnesota Railroad Company, as sole owner of the franchise to run through trains on the said western division, will hold all parties leasing or hiring to the said Milwaukee and St. Paul Railway Company, or in any manner aiding or abetting said last-named company in infringing on the legal rights of the Milwaukee and Minnesota Railroad Company, owner of the franchises, by furnishing rolling stock to be used as aforesaid, as jointly liable with the said Milwaukee and St. Paul Railway Company for all damages to the Milwaukee and Minnesota Railroad Company occasioned by the diversion of the traffic and travel from its lawful channel over the road of the said Milwaukee and Minnesota Railroad Company.

By order of the executive committee.

A. C. GUNNISON, *President*.

179 *Exhibit No. 3.*

Detailed statement of rolling stock delivered to Milwaukee and Minnesota Railroad Company.

Engines Nos. 1, 2, 7, 10, 11, 12, 14, 16, 20, 22, 24, 25, 29, 30, 31, 36, new No.—15.

Baggage cars—Nos. 1, 4, 6, 7—4.

Mail and express cars—Nos. 1, 2, 3—3.

Caboose cars—Nos. 1, 2, 3, 4, 5, 6—6.

Passenger coaches—Nos. 1, 7, 13, 15, 17, 18, 19, 20—8.

Platform cars—Nos. 9, 245, 37, 207, 231, 83, 7, 109, 77, 157, 223, 117, 93, 143, 161, 101, 107, 187, 119, 85, 23, 149, 97, 121—24.

Box cars—Nos. 10, 524, 602, 674, 744, 828, 1,206, 102, 526, 604, 676, 750, 830, 1,210, 134, 534, 606, 678, 745, 832, 1,238, 138, 542,

608, 682, 756, 834, 1,230, 170, 546, 610, 684, 758, 838, 1,242, 214, 548, 612, 686, 760, 842, 1,286, 242, 550, 614, 688, 762, 844, 1,290, 252, 552, 616, 690, 766, 846, 1,320, 318, 554, 618, 692, 768, 848, 1,324, 328, 556, 620, 694, 774, 850, 1,342, 558, 622, 690, 776, 854, 1,352, 446, 562, 624, 698, 782, 856, 1,354, 450, 564, 626, 700, 786, 858, 1,370, 452, 566, 628, 702, 788, 868, 1,390, 456, 568, 630, 704, 790, 874, 1,442, 458, 570, 632, 706, 794, 876, 1,504, 466, 572, 638, 708, 796, 1,514, 468, 574, 644, 710, 798, 1,520, 472, 576, 646, 712, 800, 916, 1,526, 476, 578, 650, 716, 802, 928, 1,588, 478, 580, 654, 718, 804, 944, 1,596, 480, 582, 656, 720, 806, 958, 1,614, 492, 584, 658, 722, 808, 960, 1,624, 494, 586, 660, 724, 810, 1,008, 1,632, 496, 588, 662, 726, 812, 1,026, 1,684, 506, 590, 664, 728, 814, 1,098, 1,708, 512, 592, 666, 730, 818, 1,102, 514, 594, 668, 738, 820, 1,134, 516, 598, 670, 740, 822, 1,184, 518, 600, 672, 742, 824, 1,192, 203.

180 United States circuit court.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Matt. H. Carpenter, being first duly sworn, on oath says that a copy of said chattel mortgage mentioned in the answer of the Milwaukee and St. Paul Railway Company and others, filed this day to the motion for attachment and sequestration, &c., as appears from the printed record in the land grant case, so-called, is attached hereto and marked Exhibit No. 1.

MATT. H. CARPENTER.

Subscribed and sworn to before me, this 13th day of April, A. D. 1866.

JAMES McFARLIN,
U. S. Com'r, Dist. of Wis.

Indorsed: Filed April 13, 1866.

181 *Exhibit No.* 1.

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company, in the city of Milwaukee, on the 4th day of September, A. D. 1857, the following proceedings were had:

Mr. Palmer presented the following additional deed of trust and resolution, authorizing the execution of the same by the president and secretary, which resolution was adopted by the board:

Resolved, That the president and secretary be authorized and directed to execute to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, in behalf of this company, a further deed of trust or mortgage, of which the following is a copy, viz:

This indenture, made and entered into this 4th day of Sep-
182 tember, in the year of our Lord one thousand eight hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, parties of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, all of the city and State of New York, parties of the second part.

Whereas the said parties of the first part did, on the 31st day of December, in the year one thousand eight hundred and fifty-six, duly execute and deliver to the said parties of the second part, as trustees, a deed of trust, bearing date on that day, wherein and whereby the said parties of the first part, for the purpose of securing the payment of certain moneys which the said parties of the first had determined to borrow.

Stipulated and provided for the issue of the bonds of the said La Crosse and Milwaukee Railroad Company for ten millions of dollars of the date, tenor, and description in the said deed of trust particularly set forth, and payable, principal and interest, as therein provided; and whereas the said railroad company in and by the said deed of trust granted, bargained, sold, conveyed, and confirmed unto the said parties of the second part all and singular the several tracts of land which then was or thereafter might be or constitute the site of the roadway, turn-outs, engine-houses, workshops, depots, and other buildings of the said company, and other lands, buildings, and estate and property, real and personal and mixed, therein specially and particularly described, which conveyance was, in and by the said deed of trust, declared to be and was made to the said parties of the second part and the survivors and survivor, successors and successor of them, and their and his heirs and assigns, in trust and upon the trusts, terms, and conditions therein particularly expressed.

And whereas the said parties of the first part did, in and by the said deed of trust, covenant and agree to and with the said trustees, the said parties of the second part, that the said railroad company would, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to the said trustees, or to their successors in the said trust, all such further conveyances and assurances, and would do all such further acts as might be either necessary or proper for more effectually vesting in the said trustees all such right, title, interest, or estate, both legal and equitable, as said railroad company then had or may thereafter acquire of, in, and to all and every part of the property thereby conveyed, or intended to be conveyed.

183 And whereas the said railroad company had, at the time of the execution of the said deed of trust, or have since acquired certain property which was conveyed, or intended to be conveyed thereby, and of which a further conveyance is deemed proper for more effectually vesting in the said trustees all the title, right, interest, and estate, legal or equitable, which the said company then had or have since acquired thereby (therein.)

Now, therefore, know all men by these presents, that the said par-

ties of the first part, in pursuance of the covenants and stipulations in the said deed of trust contained, and in consideration of the premises, and of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said parties of the second part all and singular about eleven thousand tons of iron rails, being all the iron purchased for and belonging to the said company, and lying at Milwaukee and elsewhere along the line of the road of the said company, or wherever the same or any portion thereof may be and not actually laid down in the track thereof, and all and singular the locomotives, cars, engines, tools, materials, lumber, office furniture, and personal property of every description belonging to the said company wherever the same may be.

To have and to hold all and singular the property hereby conveyed or intended to be conveyed to the said parties of the second part, and the survivors or survivor of them, their successors and successor, and their and his heirs and assigns, upon the like trust terms, trusts, and conditions as are in the said deed of trust contained, and all the power and authority granted to the said parties of the second part, in and by the said deed of trust, in relation to the property conveyed thereby, and in relation to the sale, conveyance, and disposal thereof, and in relation to the disposition and application of the proceeds of such property in case of sale, are hereby conferred upon, granted to, and vested in the said parties of the second part in relation to the property hereby conveyed, as fully and effectually as if the property hereby conveyed had constituted a part of the roadway of the said company described in the said deed of trust at the date thereof.

And the said parties of the second part are hereby charged
184 with all the duties in relation to the property hereby conveyed, and the sale and disposition thereof and of the proceeds thereof, in case of sale thereof, with which they are charged in relation to the property conveyed or intended to be conveyed by the said deed of trust; and the said parties of the second part may, and they are hereby, authorized and required to treat the property hereby conveyed in the same manner and to hold the same upon the same terms, trusts, and conditions, and for the same purposes as the property mentioned in the said deed of trust, and not otherwise; and may take possession thereof and sell and dispose of the same in the same manner, at the same time, and upon the same conditions as they may take possession of and sell and dispose of the property in the said deed of trust mentioned and as a part thereof, and not otherwise; and it is hereby declared to be the object and intention of these presents and of the parties hereto to subject the property hereby conveyed, or intended to be conveyed, and every part thereof to the operation of said deed of trust, and each and every stipulation and covenant therein contained, as fully and effectually to all intents and purposes as if the said property hereby conveyed, or intended to be conveyed, had at the time of the execution of the said deed of trust constituted a part of the property thereby conveyed and had then been embraced in and conveyed thereby.

In witness whereof the said railroad co. has hereto affixed its corporate seal and caused the same to be subscribed by its president and secretary, in the day and year first above written.

[L. S.] BYRON KILBOURN,
President.

J. HADLEY,
Sec'ry of the R. R. Co.

In presence of—
H. M. PEABODY.
E. P. WHALING.

STATE OF WISCONSIN, *Milwaukee County, ss:*

On the 4th day of September, in the year one thousand eight hundred and fifty-seven, before me came Byron Kilbourn, the president of the La Crosse and Milwaukee Railroad Company, with
185 whom I am personally acquainted, and who, being by me duly sworn, says that he resides in the city of Milwaukee, in said county, and that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the foregoing indenture is the common and corporate seal of the said railroad company, and was affixed to the said indenture by order of the board of directors of said company, for the uses and purposes therein expressed; and that he, by like order, did subscribe his name thereto as president of said company; and that Jackson Hadley, as secretary of said company, subscribed his name thereto by like order and authority.

H. L. PALMER,
Notary Public, Milwaukee County.

And to affix thereto the corporate seal of the company, and to cause the same to be recorded in the office of the secretary of state, and to file copies thereof whenever necessary to render the same an effective security, and to deliver the same when so executed and recorded to the said trustees.

186 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

To the honorable the circuit court of the United States for the district of Wisconsin:

In pursuance of an order of reference made in this cause on the thirteenth day of April, A. D. 1866, a certified copy of which order is hereto annexed, I, Henry L. Palmer, named in the said order, do respectfully report that, on the said thirteenth day of April instant, I issued a summons requiring the respective parties to attend before me on the 13th day of April instant, at 2½ o'clock p. m., to proceed upon the examination of the report of Hans Crocker, receiver, and

the exceptions thereto, and caused the same to be served upon the solicitors of the respective parties, which summons, with admission of service thereof, is hereto attached and herewith returned, marked Exhibit No. 1.

That I have been attended by Hans Crocker, esq., the receiver mentioned in the said order, and by James S. Brown, esq., his counsel; by John W. Cary, esq., counsel for the Milwaukee and St. Paul Railway Company, and by Matt. H. Carpenter and H. M. Finch, esq's., as counsel for the Milwaukee and Minnesota Railroad Company; and that I have taken proofs in regard to the matters referred to me by the said order, in addition to the proofs on file in, and the records of this cause, which proofs consist of depositions and exhibits; the exhibits are marked number 1 to number 3 inclusive.

I further certify and report that the said Hans Crocker, receiver, from the first day of August, A. D. 1865, to the twelfth day of April, A. D. 1866, received, and as such receiver is chargeable with and accountable for the sum of two hundred and ninety-two thousand two hundred and seventy-six dollars and fifty-three cents, including the balance in his hands on the 31st day of July, A. D. 1865,
187 as shown by the debit side of the account contained in Exhibit number 2, hereto annexed, viz: $292,276 53.

That during the same period of time the said Hans Crocker, receiver, has disbursed in the proper execution of his trust as such receiver, and is entitled to be credited with the sum of one hundred and ninety thousand seven hundred and fifty-three dollars and fourteen cents, as shown by the credit side of the account, Exhibit No. 2, viz: $190,753 14; which, deducted from the amount received by him as above stated, leaves a balance in his hands of one hundred and one thousand five hundred and twenty-three dollars and thirty-nine cents, ($101,523 39.)

In the report of the said Hans Crocker, receiver, filed in this cause April 13, 1866, and referred to me, he credits himself with the sum of thirty-eight thousand five hundred and sixty-nine dollars and forty-two cents, being the amount heretofore allowed him by the court for his services as receiver from June 11, 1860, to February 28, A. D. 1865, ($38,569 42,) which sum is a proper credit to the receiver.

The receiver in his last-mentioned report also credits himself with the further sum of five thousand five hundred and fifty-five dollars and fifty-four cents for compensation as receiver from the 1st of March, 1865, to the 10th of April, 1866, ($5,555 54.)

The receiver's compensation for the time mentioned, viz., from March 1, 1865, to April 10, 1866, at the rate allowed for prior service, that is to say, five thousand dollars per year, would amount to the sum so credited to himself therefor, and I therefore audit and allow the said sum of five thousand five hundred and fifty-five dollars and fifty-four cents as a proper credit to the receiver.

The two sums last mentioned amount, in the aggregate, to forty-four thousand one hundred and twenty-four dollars and ninety-six cents, ($44,124 96;) which, deducted from the balance in the receiver's hands as above stated, viz: $101,523 39, leaves a

188 balance in the receiver's hands unexpended of fifty-seven thousand three hundred and ninety-eight dollars and forty-three cents, ($57,398 43.)

The receiver also credits himself in his said report, filed April 13, 1866, as follows:

By amount of liabilities in suits	$25,000
Unliquidated and contingent claims, estimated at	3,000
Total	28,000

It appears from the testimony that there are twelve ejectment suits pending and undisposed of against the receiver and his tenants for lands belonging to the eastern division of the road, and that there are three suits against the receiver, brought to recover damages sustained on the road, now pending or not finally disposed of, in which the damages claimed amount, in the aggregate, to twenty thousand dollars. A statement of the three suits last mentioned, where pending, their present condition, and the amount claimed in each is contained in Exhibit No. 3, herewith returned.

It also appears from the testimony that there are contingent claims against the receiver, growing out of contracts believed to be just, estimated at about three thousand dollars. These contingent claims, whether in suit or not, I neither allow nor disallow, but leave it for this honorable court to make such order in the premises as it may deem proper. A statement of the receiver's account as audited and allowed by me, and also exhibiting the contingent claims above mentioned, is hereto annexed and marked Schedule A.

ROLLING STOCK.

I further certify and report that in obedience to the order of this court made on the 14th day of April, 1866, directing me to ascertain and report what should be charged for the use of rolling stock, which order or a copy thereof is hereto attached, I notified the parties to appear before me at my office, on the 14th day of April, 1866, as will appear by the notice with proof of service hereto attached and marked Exhibit No. 9. That I have been attended by the same parties by their counsel above named, and that I have taken proofs in regard to the matters referred to me by the said last-mentioned order, in addition to the proofs on file and the records of this cause,

189 which proofs consist of depositions and exhibits hereto annexed and herewith returned. The exhibits are marked number 4 to number 8, both inclusive.

I further certify and report that I find from the testimony, and have ascertained that the whole value of the rolling stock on the roads of the Milwaukee & St. Paul Railway Company, and on the eastern division of the La Crosse and Milwaukee railroad, from the 1st day of August, A. D. 1865, to the 9th day of January, A. D. 1866, was one million five hundred and ninety-three thousand and forty-two dollars and sixty-three cents, ($1,493,042 63.) That of said rolling stock

six hundred and ninety-five thousand two hundred and ninety-five dollars and fourteen cents in value was owned by the owners of the eastern division of the said La Crosse & Milwaukee railroad, viz, $695,295 14; and seven hundred and ninety-seven thousand seven hundred and forty-seven dollars and forty-nine cents in value thereof was owned by the Milwaukee & St. Paul Railway Company. That the whole cost of value of mileage or value of the use of rolling stock on the said eastern division of the La Crosse and Milwaukee railroad, for the period of time above mentioned, was forty thousand two hundred and eighty-one dollars and eighty-two cents, ($40,281 82,) as shown in and by Exhibit number 4; of this amount, 466-1000, that is to say, eighteen thousand seven hundred and seventy-one dollars and thirty-three cents, ($18,771 33,) was made and earned by the proportion of the rolling stock belonging to the owners of the eastern division of the said road, and twenty-one thousand five hundred and ten dollars and forty-nine cents thereof was made and earned by the proportion of the said rolling stock owned by the Milwaukee and St. Paul Railway Company, viz, $21,510 49.

That for the same period of time the whole cost of mileage or value of the use of rolling stock on the roads of the Milwaukee and St. Paul Railway Company was two hundred and fifty thousand three hundred and eighty-six dollars and ninety-one cents, ($250,386 91,) as is also shown by said Exhibit No. 4. Of this amount of mileage or use of rolling stock, one hundred and sixteen thousand six hundred and eighty dollars and thirty cents was made and earned by the proportion of the rolling stock owned by the owners of the eastern division of the La Crosse and Milwaukee railroad, viz: ($116,680 30,) and one hundred and thirty-three thousand seven hundred
190 and six dollars and sixty-one cents thereof ($133,706 61) was made and earned by the proportion of the said rolling stock owned by the Milwaukee and St. Paul Railway Company.

I have further ascertained and report that the total cost of the repairs of all the rolling stock belonging to both roads, from the 1st day of August, A. D. 1865, to the 9th day of January, 1866, was one hundred and forty-eight thousand three hundred and twenty-eight dollars and nineteen cents, ($148,328 19,) which, divided in the proportion of 695,295 14 to 797,747 49, or 466-1000 to 534-1000, gives sixty-nine thousand one hundred and twenty dollars and ninety-four cents ($69,120 94) as the amount thereof chargeable to the eastern division rolling stock.

The Milwaukee and St. Paul Railway Company ought, therefore, to be charged for the use of the rolling stock belonging to the owners of the eastern division for the period of time from the 1st day of August, 1865, to the 9th day of January, A. D. 1866, the sum of one hundred and sixteen thousand six hundred and eighty dollars and thirty cents..... $116,680 30

Less the value of the use of rolling stock belonging to the Milwaukee and St. Paul Railway Company on the eastern division for the same time, above ascertained to be twenty-one thousand five hundred and ten dollars and forty-nine cents		$21,510 49
Balance		95,169 81
The Milwaukee and St. Paul Railway Company is entitled to a credit against the eastern division in this account for the cost of the repairs on the rolling stock belonging to the eastern division for the same period of time, ascertained above to be sixty-nine thousand one hundred and twenty dollars and ninety-four cents	$69,120 94	
Less the amount heretofore charged to the eastern division by the Milwaukee and St. Paul company for such repairs, and contained in the items numbered 5, 6, and 7 in the account marked Exhibit No, 3, amounting to twenty-one thousand nine hundred and sixty-two dollars and seventy cents	21,962 70	
		47,158 24
Net balance		48,011 57

Leaving a net balance of forty-eight thousand and eleven dollars and fifty-seven cents, ($48,011 57,) which I have ascertained and report should be charged to the Milwaukee and St. Paul Railway Company for the use of the rolling stock belonging to the eastern division of the La Crosse and Milwaukee railroad from August 1st, A. D. 1865, to January 9th, A. D. 1865, over and above the amount expended by the Milwaukee and St. Paul Railway Company for repairs on the said rolling stock.

H. L. PALMER.

Milwaukee, April 16, 1866.

Schedule A, mentioned and referred to in the annexed report, and forming a part thereof, viz:

Hans Crocker, receiver.	Dr.
To amount of balance in his hands August 1, 1865, and amount which came to his hands as receiver from August 1, 1865, to April 12, 1866	$292,276 53
	Cr.
By amount disbursed during the same period of time as above	$190,753 14

By amount heretofore allowed him for compensation as receiver from 11th June, 1860, to 28th February, 1865	$38,569 42	
By amount of salary from February 28, 1865, to April 10, 1866, at the same rate	5,555 54	
		$234,878 10
Balance		57,398 43

CONTINGENT CLAIMS.

Damages claimed in suits against the receiver, mentioned more particularly in Exhibit No. 3	$20,000 00
Unliquidated contingent claims against the receiver, as estimated by the witness	3,000 00
Total	23,000 00

192 H. L. PALMER.

April 16, 1866.

Exhibit No. 1.—*H. L. Palmer.*

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD CO. *et al.*

By virtue of an order of reference in this cause, dated on the 13th day of April, 1866, I do appoint the 13th day of April, 1866, at 2½ o'clock p. m., at my office, in the Chamber of Commerce building, in the city of Milwaukee, to consider the matters referred, at which time and place all parties concerned, or some one for them, are to attend.

Dated Milwaukee, April 13, 1866.

H. L. PALMER,
Special Commissioner.

Underwriting:

To proceed upon the examination of the report of Hans Crocker, receiver, and the exceptions thereto, and to audit the receiver's account.

I direct that the above summons be served upon all the parties to the above-entitled suit or their solicitors before the hour appointed for the hearing before me.

H. L. PALMER.
Special Commissioner.

Indorsed:

We severally admit due service of the within summons, April 13, 1866; Thomas L. Ogden, sol. for comp't; John. W. Cary, sol. for M. and St. P. R'w Co.; James S. Brown, att'y for Crocker; M. H. Carpenter.

193 *Exhibit No. 2.*

April 13, 1866.

H. L. PALMER, *Sp'l Com'r.*

Statement of H. Crocker, receiver—receipts and disbursements from August 1st, 1865, to April 10, 1866, inclusive.

		Receipts.	Disbursements.
1865.			
	1. Balance reported July 31, 1865	$44,867 31	
August	2. Milw. and St. P. R'way Co	30,000 00	
September.	3. Milw. and St. P. R'way Co	55,331 65	
October	4. Milw. and St. P. R'way Co	50,461 34	
1866.			
January	5. Milw. and St. P. R'way Co, 2d mortgage coupons.	62,440 00	
April	6. Milw. and St. P. R'way Co	48,789 16	
	Pay roll ac, Dec. 31	387 07	
		292,276 53	
1865.			
August	8. State tax on earnings 1864		$21,330 36
	9. Encumbrances east. div. (city taxes)		63 45
	10. Legal expenses		2,500 00
	11. 1st mortgage coupons		1,997 30
	12. Milw. city coupons		1,045 70
September.	13. Operating expenses		6 00
	14. Encumbrances east. div. (taxes)		175 76
	15. Legal expenses, forclosure 2d mort., &c		19,558 21
	16. 1st mtge. coupons		704 76
	17. Milw. city coupons		8,184 66
October	18. Right of way east. div'n		611 00
	19. 1st mtge. coupons		192 07
	20. Milw. city coupons		799 95
November.	21. Legal expenses		1,095 45
	22. Encumbrances east. div'n (taxes)		127 86
	23. 1st mtge. coupons		35,084 37
	24. Milw. city coupons		1,095 84
December	25. Loss and damage		98 76
	26. Operating expenses		51 00
	27. Legal expenses		845 53
	28. 1st mtg. coupons		2,936 20
	29. Milw. city coupons		75 25
1866.			
January	30. Operating expenses		229 00
	31. Legal expenses, foreclosure 2d mtge		17,796 36
194	32. Legal expenses		91 75
	33. 1st mtge. coupons		666 66
	34. Milw. city coupons		33 33
	35. 2d mtge. coupons		62,400 00

Statement of H. Crocker—Continued.

		Receipts.	Disbursements.
1866.			
February..	36. Encumbrances east. div. (taxes, 1862).....	.....	$221 14
	37. Operating expenses.....	.....	32 25
	38. 1st mtge. coupons	.....	153 59
	39. Milw. city coupons.....	.....	391 30
March	40. Operating expenses.....	.....	4 00
	41. 1st mtge. coupons.....	.....	38 10
	42. Milw. city coupons.....	.....	16 66
April.....	43. Operating expenses.....	.....	3,000 00
	44. Encumbrances east. div. (taxes).....	.....	1,863 66
	45. Legal expenses.....	.....	5,177 35
	46. 1st mtge. coupons.....	.....	43 80
	47. Milw. city coupons.....	.....	14 71
			190,753 14
	Balance April 10, 1866.....	.....	101,523 39
		$292,276 53	292,276 53

Exhibit No. 3.

April 13, 1866.

H. L. PALMER, *Auditor.*

Statement of the earnings and expenditures of the eastern division La Crosse and Mil. R. R. from August 1st, 1865, to January 9th, 1866.

Earnings:	
From freight.....	$170,551 78
From passengers.....	41,906 81
From mails, rents, and miscell.....	4,788 66
	217,247 25
Operating expenses:	
Repairs of track.....	$19,952 52
Repairs of bridges.....	604 18
Repairs of fences.....	210 02
Repairs of buildings.....	2,529 25
Repairs of locomotives.....	9,087 59
Repairs of cars.....	11,866 80
Repairs of tools and machinery.....	1,008 31
Management and gen'l offices.....	6,045 69
Station service.....	10,463 51
195 Conductors, baggage, and brakemen.....	4,305 83
Train and station supplies.....	1,410 59
Engineers, firemen, and wipers.....	7,544 33

Oil and waste	$2,783 34
Fuel consumed	21,392 67
Loss and damage of fr't and baggage	830 97
Miscellaneous expenses	141 80
Animals killed	244 43
Telegraph line	67 44
Rents	25 00
U. S. revenue tax	5,529 14
Printing and advertising	708 65
Revenue stamp ac	241 07
Renewal of track	11,336 57
	118,329 70

Recapitulation:

Gross earnings	$217,247 25
April 14, 1866	118,329 70
Net earnings	98,917 55

Exhibit No. 3.

H. L. PALMER, *Sp'l Com'r.*

Statement of suits pending ag'st the undersigned as receiver for injury done to persons.

1. Joseph Lutes, of Monroe county, claims ten thousand dollars for injury done to him, whereby he lost a foot. This suit was originally brought in the Monroe circuit, but has since been transferred to the Milwaukee circuit. The amount first claimed was $5,000, but upon and amended complaint the amount now claimed is $10,000.

2. Peter Roth, adm'r, &c., brings suit against the undersigned as receiver for killing Matthias Schuh. The amount claimed is $5,000, being the amount fixed by the statute. On the trial of this case in the circuit court of Milwaukee the plaintiff was non-suited, but has since made and entered and filed exceptions for the purpose of appealing the case to the supreme court.

196 3. Frans Loof, adm'r, &c., brought suit against the undersigned as receiver for the killing of Nicholas Loof, and claimed $5,000. In this case a non-suit was granted by the court, and it has been removed to the supreme court on exceptions.

14th April, 1866.

H. CROCKER, *Rec.*

Exhibit No. 4.

April 14, 1866.

H. L. PALMER, *Auditor.*

Statement of the cost of rolling stock Milwaukee and St. Paul railway and eastern division, (L. & M. R. R.,) January 9, 1866.

		Minn. Co.	St. Paul Co.
Stock taken possession of by receiver		$537,656 14	$31,979 64
Purchased and built by receiver		157,639 00	34,083 87
Purchased and built by St. P. Co., July 31, '65			439,900 00
Purchased and built by St. P. Co., July 31, '65, to Jan'y 9, '66:			
Locomotives, 9	$182,383 98		
Passenger cars, 2	11,000 00		
Platform cars, 4	3,000 00		
Freight cars, 90	95,400 00		
			291,783 98
		695,295 14	797,747 49

Statement of the division of mileage cost, (on above basis.)

	E. D. prop.	St. P. Co.
Whole cost on east. div. $40,281 82 $\frac{466}{1000}$ and $\frac{534}{1000}$ of	$18,771 33	$21,510 49
Whole cost on St. P. Co., $250,386 91 $\frac{466}{1000}$ and $\frac{534}{1000}$ of	116,680 30	133,706 61

Statement on the division of repairs, (on above basis.)

	E. D. prop.	St. P. Co.
Whole cost of repairs, $148,328 19 $\frac{466}{1000}$ and $\frac{534}{1000}$ of	$69,120 94	$79,207 25

Cost of mileage E. D. stock on St. P. Co. road		$116,680 30
Less cost of mileage St. P. Co. stock on E. D. road		21,510 49
Bal. due E. D. stock on mileage		95,169 81
Cost of repairs E. D. stock	$69,120 94	
Less am't charged E. D. for repairs	21,962 70	
		47,158 24
		48,011 57

197 *Exhibit No. 5.*

April 14, 1866.

H. L. PALMER, *Auditor.*

Cost of mileage of rolling stock on eastern division (L. & M. R. R.) and Milwaukee and St. Paul railway, July 31, 1865, to January 9, 1866.

Eastern division, (L. & M. R. R.:)

	Miles.	Per mile.	
Locomotives	86,255	25c.	$21,563 75
Passenger cars	51,430	5c.	2,571 50
Baggage cars	25,230	3c.	756 90
Mail and express cars	23,095	3c.	692 85
Freight cars	734,841	2c.	14,696 82
			40,281 82

Milwaukee and St. Paul railway:

	Miles.	Per mile.	
Locomotives	517,505	25c.	$129,376 25
Passenger cars	488,070	5c.	24,403 50
Baggage cars	124,224	3c.	3,726 72
Mail and express cars	100,120	3c.	3,003 60
Freight cars	4,493,842	2c.	89,876 84
			250,386 91

M. & St. P.	$250,386 91
East div	40,281 82
Total cost	290,668 73

Exhibit No. 6.

Filed April 14, 1866.

H. L. PALMER, *Auditor.*

Statement of repairs of rolling stock and tools and machinery of the M. & St. Paul R'y Co. and the eastern division of La Crosse and Milwaukee R. R. from Aug. 1st, 1865, to January 9, 1866:

La Crosse & Milwaukee.		Milwaukee & St. Paul Co.	
Repairs of locomotives	$9,087 59	Repairs of locomotives	$52,760 68
Repairs of cars	11,866 80	Repairs of cars	67,332 00
Repairs of tools and machinery	1,008 31	Repairs of tools and machinery	6,272 81
	21,962 90		126,365 49

E. & O. E.
Milwaukee, April 14, 1864.

198 *Exhibit No. 7.*

April 14, 1866.

H. L. PALMER, *Auditor.*

Statement of rolling stock purchased and built by the Milwaukee & St. Paul R'y Co. from July 31, 1865, to January 9, 1866:

9 locomotives at $20,264 88		$182,383 98
2 passenger cars, 5,500 00		11,000 00
90 box cars, 1,060 00		95,400 00
4 flat cars, 750 00		3,000 00
		291,783 98

E. & O. E.
Milwaukee, April 14, 1866.

Exhibit No. 8.

April 14, 1866.

H. L. PALMER, *Auditor.*

Statement of mileage, rolling stock, July 31, 1865, to January 9, 1866.

	M. & St. P. R'y.	East divis.
Locomotives	$517 505	$86,255
Passenger cars	488 070	51,430
Baggage cars	124,224	25,230
Mail and express cars	100,120	23,095
Freight cars	4,493,842	734,841

Milwaukee, Wis., April 13th, 1866.

Exhibit No. 9.

April 14, 1866.

H. L. PALMER.

U. S. circuit district of Wisconsin.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

GENT.: You are notified that I will be ready to proceed to examine and ascertain what should be charged for the use of rolling
199 stock as required by the order of the court made in this cause this day, at two o'clock this p. m., at my office, at which time

and place the parties, or some one for them, are required to be present.

Yours, &c.,

H. L. PALMER, *Special Com'r.*

Milwaukee, April 14, 1866.

To T. L. OGDEN, esq.,
Sol. for Complt.
JAS. S. BROWN, esq.,
Sol. for Receiver.
JOHN W. CARY,
Sol. for the Mil. & St. Paul Railway Co.
M. H. CARPENTER, esq.,
Sol. for the Mil. & Minnesota Railroad Co.

Indorsed: We severally admit due service of the within notice, April 14, 1866.

THOMAS L. OGDEN,
Sol. for Comp't.
JOHN W. CARY,
Sol. for M. & St. P. R'y Co.
BROWN & PRATT,
Att'ys for Rec.
M. H. CARPENTER,
For Mil. & M. R. Co.

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Examination of witnesses taken in pursuance and by virtue of an order of reference in the above-entitled cause, on the thirteenth day of April, A. D. 1866.

FRIDAY, *April* 13, 1866.

Present: H. L. Palmer, special commissioner named in said order; James S. Brown, solicitor for receiver; M. H. Finch, counsel for the Milwaukee and Minnesota Railroad Company.

200 William L. Hinsdale, sworn and examined on behalf of receiver, testified as follows:

I have been the cashier for the receiver since the first of August last.

Question. Have you, as such cashier, under the orders of the receiver, practically received and disbursed all sums under the control of the receiver?

Answer. Yes; all that I know anything about. So far as I know and understand, I have.

Question. Have you kept faithful accounts of the funds disbursed by the receiver?

Answer. I have.

Question. Is the usual mode of disbursement by the receiver through you, as cashier?

Answer. Yes.

Question. Did you make out from your books this account marked Exhibit No. 2, which I now present to the auditor?

Answer. I did.

Question. Is this account, as made out by you, a just and correct account from the books kept by you?

Answer. It is.

Question. Is it an honest and true account?

Answer. It is.

Question. Are you aware that there are unliquidated claims against the receiver, growing out of contracts, express or implied?

Ans. Yes, I am.

Question. Were claims presented against the receiver just, as you believe, after he made out his last final report?

Answer. There were such claims presented.

Question. What, in your opinion, would be a fair amount to protect the receiver against just claims arising out of contracts not yet adjusted or paid?

Answer. I should think at least three thousand dollars.

(Mr. M. H. Finch, for the Milwaukee and Minnesota Railroad Company, objects in due time to the last ten questions and the answers thereto, as immaterial, irrelevant, and incompetent.)

(Objection overruled and exception noted.)

Cross-examined by Mr. Finch:

Question. Do you know anything of your own personal
201 knowledge of the various items in this account?

Answer. I know the fact that those receipts and disbursements have occurred.

Question. Under date of September, 1865, is the following item: "Legal expenses foreclosure 2d mortgage, &c., $19,558 21." Do you know, of your own knowledge, the items upon which that statement was made?

Answer. I know some of them were paid on orders of court; the greater portion of it I know was.

Question. What proportion was paid on orders of the court?

Answer. I should think three-quarters of them were, to my knowledge.

Question. What is included under the term, legal expenses?

Answer. Expenses incurred in suits of various sorts.

Question. Under date November, 1865, is an item, "legal expenses, $1,095 45." Do you know for what purpose that item was paid, and in what suit?

Answer. I don't remember without examination. We have a voucher for it.

Question. Under date January, 1866, is the item, "legal expenses foreclosure 2d mortgage, $17,796 36." Do you know the items that make up that sum total?

Answer. I don't remember the items now; there is a variety of items included in it.

Question. Was that amount paid by the order of court?

Answer. It was.

Question. Under date of April, 1866, is the item, "legal expenses, $5,177 35." To whom was that amount paid?

Answer. I can't remember now; the vouchers will show it.

Question. Do you know anything of the particular items going to make up this statement marked Exhibit 2, except from the books and the vouchers?

Answer. That is all I know about them—is from the books and vouchers.

Question. In whose handwriting is Exhibit No. 2?

Answer. It is my own handwriting.

Question. How and in what manner was this Exhibit number 2 made up by you? Was it by taking the books and vouchers item by item, and carefully compared item by item by you before extending the aggregate?

(Mr. Brown here appears and objects that Mr. Carpenter and Mr. Finch were not present until the examination of Mr. Hinsdale and Mr. Whaling was concluded, and that they have no right of cross-examination, but must recall the witnesses as their witnesses in order to examine them; that such right should not be accorded, because the order to report on Monday was procured by the Milwaukee and Minnesota company; and it is evident that the only object of cross-examination is delay.)

202 (Objection overruled and exception noted.)

Answer. It was taken from my books as entered on the books. The aggregate for each class of expenditures for each month is made up of the items of that class of expenditure for the month. The items of expenditure were compared with the vouchers before they were entered upon the cash book, and the items in the account, marked Exhibit 2, were taken from the cash book.

Question. Are the vouchers for the items of legal expenses now in the hands of the receiver, or in your hands as the cashier of the receiver?

Answer. They are in my hands as cashier of the receiver.

Question. Will you produce here and now to the auditor the vouchers, covering all the items under the head of legal expenses, as those expenses appear upon Exhibit No. 2?

Answer. I can produce them.

(The counsel for the receiver now insists for the purpose of undertaking what those items are.)

Question. Have you the voucher for the item in Exhibit No. 2, under date August, 1865, "legal expenses, $2,500?"

(Objection by Mr. Brown: The time is limited within which this report must be made; Mr. Hinsdale has said he has all the vouchers;

the last question required him to produce them, and he has produced them all; and asking separate questions as to each, when there is a general question as to all, is merely wasting time already limited by the court, and is depriving the receiver of a chance to prove his account as required by the court.)

(Overruled and exception.)

Answer. I have not the voucher, but I have a memorandum stating that the voucher was taken out of the package by H. Crocker, Jan'y 12, 1866. I have had the voucher.

(Mr. Brown here states that he gave such voucher, and that he has been paid in full in accordance with the order of the court dated July 18, 1865.)

(The statement objected to by Mr. Finch as not in evidence. Objection sustained.)

Question. Do you know, of your own knowledge, for what services the said $2,500 was paid?

Answer. I do not.

Question. Under the head of September, 1865, is an item, "legal expenses, foreclosure 2d mortgage, &c., $19,558 21," have you the voucher for that item?

203 Answer. I have the voucher.

Question. Will you state the items in those vouchers, making up the said aggregate?

Answer. 1, James S. Brown, balance of $1,600, allowed him by order of the court, $600; the receipt is dated September. 6, 1865. Next, an item paid Thomas L. Ogden, pursuant to order of court, dated July 18, 1865, receipt dated September 6, 1865, amount, $2,500 00. Next, two receipts of A. Scott Sloan, amounting in the aggregate to $867 90, costs of suit, dated Sept. 7, 1865. Next, receipt for money paid to Thomas Ewing, $4,000 00, for counsel fees, paid per order of court, 18th July, 1865; receipts in duplicate, one dated Sept. 16, 1865, and one dated Sept. 20, 1865. Next, receipt of J. M. Carlisle, without date, for $4,000 00, for counsel fees, allowed by order of court, dated July 18, 1865. Next, a note to Cary & Pratt, paid April 2d, 1864, for $1,000 00. Next, a receipt from Cary & Pratt for $1,000, paid August 12, 1865. Next, a draft of Cary & Pratt on H. Crocker, receiver, dated 22d July, 1862. for $1,000, payable 90 days after date; accepted and stamped paid Oct. 27, 1862. Receipt of Cary & Pratt for $4,590 31, dated Sept. 2d, 1865. These payments to Cary & Pratt make up the amount of $7,590 31, being part of amount allowed by H. L. Palmer, auditor. These items all together make up the aggregate of $19,558 21, contained in Exhibit No. 2.

Question. Under date November 16, 1865, is an item, "legal expenses, $1,095 45," for what services was this item?

Answer. It is composed of three items: a receipt of Brown & Pratt for $1,000, dated Nov. 28, 1865, on account of services rendered to H. Crocker, receiver. Also receipt of A. Scott Sloan, dated Nov. 30, 1865, for $65 45, clerk's fees. Also a receipt from John Dimond, dated Nov. 8, 1865, for $35 00, for witness fees, making in the aggregate $1,095 45.

Question. Under date of December, 1865, is the item, "legal expenses, $845 53," state to whom and for what services that sum was paid.

Answer. It was paid to Smith & Salomon for services and disbursements in several suits. The receipt is dated December 30, 1865.

Question. Under date of January, 1866, is an item "legal expenses, foreclosure, 2d mortgage $17,796 36," to whom and for what was that paid?

Answer. It was paid to Russell Sage, as attorney in fact for James T. Soutter, trustee, and in pursuance of an order of court
204 dated July 18th, 1865, and the receipt is dated January 12, 1866. The item, $91 75, under same date, is money paid Levi Hubbell for services defending suit against Q. C. Olin, a conductor on the road under the receiver, and expenses.

Question. Under head of April, 1866, is an item "legal expenses, $5,177 35." To whom and for what was this item paid?

Answer. First, a note dated 9th September, 1862, payable ninety days from date, signed by H. Crocker, and payable to Levi Hubbell for five hundred dollars, receipted on the back December 11, 1862. Also a receipt from Levi Hubbell for $300 for professional services, dated January 24, 1862.

Adjourned to April 14, 1866, at 9 a. m.

APRIL 14, 1866.

Parties present as before.

William L. Hinsdale, cross-examination continued:

Question. You have given the two items of payment to Judge Hubbell. State the balance of the items making up the said sum of $5,177 35.

Answer. There is an account of Emmons Taylor, consisting of drafts and receipts, commencing in 1860, and ending in November, 1865, for legal services and disbursements, their aggregate payments made to him amounting to $1,727 35. The last payment to Mr. Taylor was made January 17, 1866, and the first payment was made in 1860. Also, amount paid to Rice and Baum for legal services, $50; receipt dated April 12, 1866. Also, cash paid Brown and Pratt, $2,600; receipt dated April 10, 1866.

Question. Under date of April, 1866, is an item "operating expenses, $3,000." Do you know to whom and for what that item was paid?

Answer. Yes, sir; consists of amount paid W. L. Hinsdale for services as cashier for Crocker, receiver, from July 1, 1863, to April 1, 1866, at $1,000 per year, amounting to $2,750. Also, amount paid to Dwight W. Keyes, services, making statements and sundry accounts for receiver to be used in court, during the years 1863, '64, amounting to $250, paid and receipt dated April 12, 1866.

Direct examination resumed:

I now have the voucher for the $2,500 paid to James S. Brown; it was paid pursuant to the order of the court dated July 18, 1865, and the receipt is date dAugust 29, 1865.

Question. I notice several items where the vouchers show payment sometime ago; will you state whether those items have ever, before they were entered in the account now under examination,
205 been charged in account by Mr. Crocker, or entered upon his books as a charge.

Answer. They have never been entered before.

Question. I notice payment made a year or two ago to Cary and Pratt, as appears by their draft and voucher; will you state whether in paying them the amount allowed to them by the court by the order of July 18, 1865, those vouchers were applied to and formed part of that amount?

Answer. I can't tell any further than appears by the receipt, as I have stated above.

Question. Were your services, during the time mentioned by you, as cashier for Colonel Crocker, fairly worth the $2,750 received by you therefor?

Answer. I consider that sum a fair charge.

Question. Did all the sums received and disbursed during that period pass through your hands?

Answer. They did.

Question. Have you received any other compensation for those services?

Answer. I have not.

The two accounts marked respectively Exhibits Nos. 2 and 3, hereto annexed, are now offered and read in evidence.

W. T. HINSDALE.

William L. Hinsdale recalled:

Question. In keeping your accounts and making out your statements for the receiver, have you made any rests in consequence of the several accountings of the receiver before the auditor and the orders of the court confirming the accounts, or have you continued the accounts charging all sums received and crediting all sums paid out?

Answer. I have not made any rests in the receiver's account in consequence of the several accountings of the receiver before the auditor and the orders of the court confirming the accounts. I have kept a continuous account of the receipts and disbursements.

Question. Does the $44,867 31 stated in the account marked Exhibit No. 2 as the balance in the hands of the receiver on the 31st day of July, 1865, exhibit the correct balance as the result of all the operations of the receiver on hand on that day?

Answer. It does.

206 Question. Is the $30,000 charged to the receiver in the month of August, 1865, the only sum of $30,000 received

during that month, and is it the same as is charged to him on his last accounting before the auditor as received since the 31st day of July, 1865?

Answer. It is.

W. L. HINSDALE.

James P. Whaling, sworn and examined on behalf of the receiver, testified as follows:

I am auditor of the Milwaukee and St. Paul Railroad Company.

Question. Were the accounts of the Milwaukee and St. Paul Railway Company in connection with the eastern division of the road, and their operating of the same under Col. Crocker, audited and controlled by you?

Answer. They have been for the last two years.

Question. Was this account of operating expenses, marked Exhibit No. 3, made out by you and under your supervision?

Answer. It was made out under my supervision.

Question. Is that account a correct statement of the receipts and operating expenses of the eastern division of the La Crosse railroad from the 1st of August, 1865, to the 9th of January, 1866, at which time the road passed out of the hands of the receiver?

Answer. It is.

J. P. WHALING.

Rufus A. Wilder, sworn and examined on behalf of the receiver, testified as follows:

I am the general manager of the Milwaukee and Minnesota Railroad Company.

Question. Was there upon the track when it was delivered to the Minnesota company by the receiver large amounts of wood?

(Mr. Finch objects to the question as incompetent and irrelevant. Objection overruled and exception.)

Answer. There was wood upon the track; I can't tell what amount; there was considerable; but I did not go over the whole track when we took possession, and can't therefore tell the quantity.

Question. Has the wood or any portion of it been used by your company in running their trains?

(Objected to as above, and same ruling and exception.)

207 Answer. No portion of it has been used by our company to my knowledge.

R. A. WILDER.

Hans Crocker, sworn and examined in his own behalf, testified as follows:

Question. Among the vouchers exhibited to the auditor are certain vouchers for money paid to Levi Hubbell. Will you state what the nature of his claim was and whether or not it was a just charge against the receiver?

Answer. His claim was for professional services rendered by him

as counsel and attorney for the receiver. I think it was just and proper.

Question. I find several vouchers for a payment made to Rice & Bunn. Will you state the nature of their claim, and whether or not it was just?

Answer. They were employed by me to defend a suit in Monroe circuit court, brought against me by one Jacob Lentz, whose leg was broken on the railroad. That suit is now transferred to the Milwaukee county circuit court, and there since having terminated, I paid them. This charge was a just charge, and I wish to say that I consider it a mighty reasonable charge, considering they were lawyers.

Question. There are similar vouchers from Emmons Taylor. Will you state the nature of his services and whether or not they were just?

Answer. They were for services, rendered and expenses paid for a period of about five years, for me as receiver or for the road as an attorney at Portage, and they are just and proper; they were for services in suits for right of way, damages to property, and prosecutions for obstructing the track. His account as rendered amounts to about $325 more. I disallowed that much of the account because I thought that part of it belonged to the St. Paul company to pay.

Question. I notice in your account, under the head of "legal expenses," large sums of money paid out. Will you state whether those items include all the sums which, by the order of the court of July 18, 1865, you were directed to pay?

Answer. They do. They were all paid by me.

Question. When did you surrender possession of the eastern division to the Milwaukee and Minnesota company?

208 Answer. The 9th day of January, 1866.

H. CROCKER.

Walter Pratt, sworn and examined on behalf of the receiver, testified as follows:

I made out the account referred to in the testimony of William L. Hinsdale, of Brown and Pratt, against the receiver; the aggregate was $3,600.

Question. Will you state what the services were, and their value?

Answer. The first charge on the bill was $1,000 for services at the July term, 1865, of the United States court upon the argument of the exceptions to the report of the auditor, and included all the services rendered for the receiver at that time. There was also a charge of $300 for services rendered to the receiver at the September term of the court; there was a charge of $1,200 for services in defending and preparing for trial twelve ejectment suits, brought against the receiver or his tenants, to recover possession of the depot and elevator property in the second ward, Milwaukee. These suits are now pending in the circuit court Milwaukee county, and are upon the calendar for trial at the next term, and are all fully prepared for trial. They were upon the calendar for trial at the last term, and also at the term

preceding the last, and were continued on application of the plaintiffs. The preparation of these cases for trial, preparing briefs, &c., has required a large amount of time and labor. There is also an item of $100 for services in the case of Joseph Lentz against the receiver, a suit now pending in the circuit court of Milwaukee county. This is a suit brought against the receiver to recover damages to the amount of $10,000 for the breaking of plaintiff's leg by the train of cars on the road, while in the possession of the receiver. There is also an item of $1,000 for counsel and advice, examining titles, payment of taxes, attending to transfer of eastern division and other property to the Milwaukee and Minnesota company, and a variety of other services rendered to the receiver during the past year, and not included in the foregoing items of charges. I consider these charges proper and just. I am a practicing attorney, and one of the firm of Brown & Pratt, attorneys and counsellors.

WALLACE PRATT.

209 Hans Crocker, recalled, testified:

The paper now presented and hereto attached, and marked Exhibit No. 3, is a statement of suits brought against me as receiver, and of the amount of damages claimed in each of them, and of their present condition, but does not embrace the contingent liability for fees and costs.

H. CROCKER.

Erastus A. Patterson, sworn and examined on behalf of the Milwaukee and Minnesota Railroad Company, testified as follows:

I am auditor of the Milwaukee and Minnesota Railroad Company. I was for a year previous to the first of February last a general accountant in the office of the Milwaukee and St. Paul Railway Company. J. P. Whaling is auditor in the office of the Milwaukee and St. Paul Railway Company. I and Mr. Whaling have examined today the accounts of mileage of the La Crosse railroad and other roads operated by the St. Paul Railway Company for the period of time extending from July 31st, 1865, to January 9, 1866. The statement hereto annexed and marked Exhibit No. 4, is a statement of the cost of rolling stock in use on the roads during the time above-mentioned. The statement above mentioned is read in evidence. The paper marked Exhibit No. 5 is a statement of the cost of mileage of the rolling stock in use on the road during that period. The statement is read in evidence. Paper marked Exhibit No. 6 is a statement of the cost of repairs of rolling stock, tools, and machinery in use on the road during the same period. (The statement Exhibit No. 6 is read in evidence, and is hereto annexed.) The paper marked Exhibit No. 7 is a statement of rolling stock purchased and built by the St. Paul company during the same period. (This statement is read in evidence, and is hereto annexed.) It is stipulated by the parties before me that the testimony taken on the last preceding reference in relation to the value of mileage for the period covered by that reference may be considered as taken on this reference,

and as applicable to the value of mileage for the period covered by this reference. The statement contained in Exhibits No. 4 and 5 show the amount due from the Milwaukee and St. Paul Railway Company for use of rolling stock during the above period belonging to the eastern division, upon the same principle as that adapted by the auditor on the last reference in that behalf, the amount being $48,011 57.

ERASTUS A. PATTERSON.

James P. Whaling, recalled by Mr. Carpenter, testified: I am auditor in the office of the Milwaukee and St. Paul Railway Company. The statements marked Exhibits No. 6 and 7 were made out by me, and are correct. The statement marked Exhibit No. 8 is a correct statement of the mileage of rolling stock on the La Crosse and St. Paul railroads for the period of time from July 31, 1865, to January 9, 1866. (The statement is read in evidence, and is hereto annexed.)

J. P. WHALING.

And came the Milwaukee and Minnesota Railroad Company, by its counsel, and filed exceptions to said report, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et als.*

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and excepts to the report of H. L. Palmer, auditor in this cause, this day made and filed; and to the following items and parts thereof, as follows, viz:

1. Said company except to said report for that the same allows said Crocker, receiver, salary at $5,000 per annum to the 10th April, 1866, whereas said receiver should be allowed no salary whatever after he surrendered possession of the road to this company, January 9, 1866.

2. Said company also except to said report for that the same allows said Crocker, receiver, an item No. 10, on Exhibit No.
211 2, legal expenses, $2,500, whereas the same ought to have been disallowed.

3. Said company also excepts to said report for that the same allows said receiver an item on said Exhibit No. 21, legal expenses, $1,095 45, whereas the same ought to have been disallowed.

4. Said company also excepts to said report for that the same allows an item No. 27, on said Exhibit No. 2, as follows: Legal expenses, $845 53; whereas the same ought to have been disallowed.

5. Said company also excepts to said report for that the same allows an item on said Exhibit No. 32, as follows: Legal expenses, $91 75; whereas the same ought to have been disallowed.

6. Said company also excepts to said report for that the same allows an item on said Exhibit No. 43, as follows: Operating expenses, $3,000; whereas the same ought to have been disallowed.

7. Said company also excepts to said report for that the same allows an item on said Exhibit No. 45, as follows: Legal expenses, $5,177 35; whereas the same ought to have been disallowed.

The Milwaukee and Minnesota Railroad Company—

By MATT. H. CARPENTER,
Solicitor.

And came the Milwaukee and St. Paul Railway Company, by its solicitor, and filed its exceptions to said report, as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, comes and excepts to the report of H. L. Palmer,
212 filed in this cause on the 16th day of April, A. D. 1866, as follows, to wit:

First. To the finding of said auditor as stated in said report. That the whole value of rolling stock on the road of the Milwaukee & St. Paul Railway Company, and on the eastern division of the La Crosse & Milwaukee railroad, from the first day of August, 1865, to and including the 9th day of January, 1866, was $1,493,042 63.

Second. To the finding of said auditor as contained in said report. That of the aforesaid rolling stock, the value of $695,295 14 thereof belonged to the owners of the eastern division of the said La Crosse and Milwaukee railroad.

Third. To the finding of said auditor as stated in said report. That the Milwaukee and St. Paul Railway Company should be charged for the use of rolling stock belonging to the owners of the eastern division on its road for the period of time from the 1st day of August, 1865, to the 9th day of January, 1866, the sum of one hundred and sixteen thousand six hundred and eighty dollars and thirty cents, ($116,680 30.)

To the finding of said auditor as stated in said report. That there should be charged to the Milwaukee and St. Paul Railway Company for the use of rolling stock belonging to the eastern division of the La Crosse and Milwaukee railroad, from August 1st, A. D. 1865, to January 9th, A. D. 1866, over and above the amount expended by the Milwaukee and St. Paul Railway Company for repairs on the said rolling stock, the sum of forty-eight thousand and eleven dollars and fifty-seven cents.

JOHN W. CARY.
Sol'r for M. & St. P. R'y Co.

And came the parties by their counsel, and the motion of the Milwaukee and Minnesota Railroad Company for an attachment against the officers and directors of the Milwaukee and St. Paul Railway Company for contempt and for sequestration of the stock of said company, &c., having been argued by counsel, and the court being divided in opinion: It is ordered by the court that said motion be, and the same hereby is, denied upon such division of opinion.

APRIL 16, 1866.

213 This day the report of H. L. Palmer, auditor in this cause, filed and made August 30, 1865, and the exceptions thereto, and the report of said auditor this day made and filed and the exceptions thereto, were considered by the court, and thereupon it is ordered by the court now here—

1. That the said report of said auditor, filed August 30, 1865, be, and the same hereby is, confirmed, and all exceptions thereto be, and hereby are, overruled.

2. Ordered further, that the Milwaukee & St. Paul Railway Company pay within ten days from this day, into this court, to be applied on the interest maturing on mortgages which are a lien on the eastern division of the La Crosse & Milwaukee railroad, in the order of their priority, the sum of thirty-three thousand and ninety-four dollars and fifty-one cents, (33,094 51,) found and reported as due from said Milwaukee and St. Paul Railway Company for use of rolling stock by said report, filed August 30, 1865, and the sum of forty-eight thousand eleven dollars and fifty-seven cents, being the amount reported by said auditor this day as due by the said Milwaukee and St. Paul Railway Company, for use of rolling stock up to January 9, 1866, ($48,011 57,) being in all the sum of eighty-one thousand one hundred and six dollars and eight cents, ($81,106 08,) and that said reports and exceptions be reserved for further hearing on other points involved therein. Ordered further, that H. L. Palmer, esq., the auditor in this cause, be allowed the sum of five hundred dollars in full for his services to this date as auditor in this cause.

APRIL 17, 1866.

This day came the Milwaukee and St. Paul Railway Company, by John W. Cary, its solicitor, and prayed an appeal to the Supreme Court of the United States from the order of this court, made in this cause on the 16th day of April, 1866, overruling the exceptions to the report of H. L. Palmer, auditor in this cause, made and filed on the 30th day of August, 1865, and the 16th day of April, 1866, and the confirmation of said reports, and requiring the Milwaukee and St. Paul Railway Company to pay into court, within ten days from the date of said order, the sum of eighty-one thousand one hundred and six dollars and eight cents, the amount found due from said company for the use of rolling stock. Whereupon it is ordered by the court that the appeal be, and hereby is, allowed; and
214 it is further ordered by the court that the said Milwaukee and St. Paul Railway Company file a bond in the penal sum of

one hundred thousand dollars, with sufficient sureties to be approved by the court or a judge thereof, for said appeal and sudersedeas, within ten days from the date of said order, exclusive of Sundays.

APRIL 19, 1866.

This day came the complainant's solicitor and filed his petition for an allowance out of moneys in the hands of the receiver for solicitor's fees, amounting to the sum of $3,110, as follows, to wit:

Circuit court of the U. S., district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

The petition of Thomas L. Ogden, solicitor for the complainant, shows to the court that he has received for his services in this suit since its commencement, at various times, fees amounting in the aggregate to the sum of $5,000, and that the same was in full for services up to and including the examination before the auditor in March, 1865; that since that time your petitioner has become entitled to the following fees:

To filing exceptions to master's report and motion for order directing Palmer & Dow to pay over moneys in their hands	$100 00
Drawing and presenting motion for possession	200 00
Drawing decree of sale, directions to marshal, &c	500 00
Adjusting the amount due on each class of coupons on the moneys paid into court, and drawing the necessary orders, ½ of 1 per ct. on am't paid out, on $462,057	2,310 00
	3,110 00

And your petitioner prays that an order may be made directing the receiver to pay such sum out of the moneys remaining in his hands.

THOMAS L. OGDEN.

215 And was argued by counsel. Whereupon it is ordered by the court that the acccount, as presented, be allowed, and that the receiver pay to said Thomas L. Ogden the sum of five hundred dollars, to be applied on said account.

And came Russell Sage, by his solicitor, Mr. Ogden, and presented his petition and affidavit showing that he is the owner of two detached coupons, one from bond No. 224 and one from bond No. 225, for interest due Sept. 1, 1858, as follows:

Circuit court of the U. S., district of Wisconsin.

JAMES T. SOUTTER, survivor, &c., *vs.* THE LA CROSSE AND MILWAUKEE Railroad Company.

The petition of Russell Sage, by Thomas L. Ogden, sol. for comp't, shows to the court that the petitioner is the holder and owner of two coupons for $40 each, detached from bonds numbered 224 and 225, for interest due on such bonds September 1, 1858; that the said coupons were never presented for payment, and that the same have never been paid; that the amount of the said coupons have not been included in either decree in this suit, but that the same are secured by the mortgage; and your petitioner prays that an order may be made directing the receiver to pay such coupons out of the moneys in his hands.

THOMAS L. OGDEN, *Sol.*

DISTRICT OF WISCONSIN, *ss:*

Russell page, being duly sworn, says he has read the foregoing petition, and knows the contents thereof, and that the same is true.

RUSSELL SAGE.

Sworn to and subscribed in open court, this 19th day of April, A. D. 1866.

JAMES McFARLIN,
U. S. Com'r Dist. of Wisconsin.

Whereupon it is ordered by the court that the receiver pay to said Sage the sum of eighty dollars, the amount of said coupons.

And came the parties by their counsel, and the exceptions to the report of H. L. Palmer, esq., to whom was referred exceptions to the account of Hans Crocker, receiver, having been heard and submitted, it is ordered by the court that exception No. 1 be allowed as to five hundred and fifty-five dollars and fifty-four cents, ($555 54,) and be overruled as to the remainder of said credit; that exceptions Nos. 2, 3, 4, and 5 be overruled; that exception No. 6 be allowed as to two hundred dollars, and be overruled as to the remainder of said credit. It is further added that all the remaining exceptions be overruled. Adding the two items here allowed, amounting to seven hundred and fifty-five dollars and fifty-four cents, to the balance of fifty-seven thousand three hundred and ninety-eight dollars and forty-three cents, as found by the auditor, there is in his hands fifty-eight thousand one hundred and fifty-three dollars and ninety-seven cents, ($58,153 97.) And it is further ordered that all the other exceptions not here mentioned be overruled, and that the said report of the auditor and account, as amended, be confirmed.

The petition of F. P. James, praying that the money in the receiver's hands be applied to certain judgments therein mentioned, having been argued, it is thereupon ordered by the court that the saidpetition be, and hereby is, denied.

The petition for the said money to be applied to the sinking fund mortgage to Palmer, trustee, having been submitted, it is ordered by the court that the same be denied. And the petition of the Milwaukee and Minnesota Railroad Company, praying that the said money be applied to the coupons of two mortgages to the city of Milwaukee, due on the first of March last, and to coupons on the mortgage in suit in this cause, due on the said first day of March last, having been argued, it is thereupon ordered that the said petition be, and hereby is, allowed.

Whereupon it is ordered by the court that the receiver pay to H. L. Palmer five hundred dollars, allowed by a previous order of the court, ($500;) that the receiver pay to Russell Sage eighty ($80) on two coupons Nos. 224 and 225, due September 1, 1858, and cancel the same; that the receiver pay to Thomas L. Ogden, for per-
217 sonal services as solicitor for complainants in this cause, on his petition this day filed, five hundred dollars, ($500;) that the receiver pay on the mortgages to the city of Milwaukee the coupons due on the first of March, 1866, ten thousand nine hundred and ninety dollars, ($10,990;) that the receiver pay the coupons on the mortgage in suit that became due on the first day of March, 1866, forty thousand dollars, ($40,000;) and that the receiver pay the residue of the money, subject to the following order, to the moneys falling due on the mortgage of the La Crosse and Milwaukee Railroad Company, to Palmer, trustee.

It is further ordered that the receiver retain in his hands for two months three thousand dollars, ($3.000,) for the purpose of paying any outstanding claims that may exist against him as such receiver, and that he advertise in a paper published in the city of Milwaukee once in each week for three weeks, for all persons having claims to present them, and at the end of said two months that he pay the residue of said sum on the coupons above mentioned.

And it is further ordered that the receiver retain twenty thousand dollars of the above sum until a sufficient bond or security, to be approved by the judge or court, be given by the Milwaukee and Minnesota Railroad Company to him for his indemnity according to the previous order of the court, the sureties to the bond approved by the clerk not being sufficient.

And thereupon came F. P. James by his counsel, Mr. Cary, and presented and filed his petition, representing that he is aggrieved by the order made this day overruling his petition and application for the money in the receiver's hands in this cause, and ordering them paid on the coupons of the mortgages on said railroad, and praying for an appeal from said order to the Supreme Court of the United States, and that the court fix the penalty of a bond on said appeal to operate as a supersedeas, and tendering such bond for the approval of the court, which petition is as follows, to wit:

Circuit court of the U. S., 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMpany and others.

218 To the judges of this honorable court:

Your petitioner, F. P. James, respectfully shows to this honorable court that he is aggrieved by the order made in this cause this day, overruling his petition and application for the moneys in the receiver's hands in this cause, and ordering them paid on the coupons of the mortgages on said railroad, and he therefore prays an appeal from said order to the Supreme Court of the United States, and requests the court to fix the penalty of a bond on said appeal to operate as a surpersedeas, and hereby tenders such bond for the approval of this court. And your petitioner will ever pray, &c.

JOHN W. CARY,
Sol. for F. P. James.

And the court being of opinion that the said petition of the said F. P. James and the other petitioners for the said money are not connected with, nor grow out of, the controversy between the parties, the complainants and defendants to the pleadings in this cause, and that they do not form such an issue by pleadings as to found such a decree in chancery as to admit of an appeal with a supersedeas: It is therefore ordered that the above petition for an appeal, with the allowance of a bond for a supersedeas, be denied.

APRIL 26, 1866.

This day came the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its motion to modify the order of the 19th of April, 1866, in relation to the receiver's account, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Here in court comes the said Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the
219 court now here to modify the order made by said court in this cause on the 19th day of April, A. D. 1866, so as to order that the exceptions to said report are overruled, without prejudice to the right of the said Milwaukee and Minnesota Railroad Company to proceed against said receiver for contempt of court, for misfeasance or malfeasance as receiver, and without prejudice to the right of said company to prosecute said receiver for damages for any misfeasance or malfeasance as such receiver.

The Milwaukee and Minnesota Railroad Company—
By MATT. H. CARPENTER, *its Solicitor.*

And came the Milwaukee and St. Paul Railway Company and filed bond on appeal, and as a supersedeas, in the penal sum of one hundred thousand dollars, which is approved by the court, as follows, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Know all men by these presents, that we, the Milwaukee and St. Paul Railway Company, as principal, and Alexander Mitchell, Russell Sage, S. Chamberlain, E. B. Wesley, F. P. James, N. A. Cowdry, John W. Cary, Washington Hunt, Walter S. Greene, and Horace Galpin, as sureties, are held and firmly bound unto James T. Soutter, survivor, &c., trustee, complainant in the above-entitled cause, in the sum of one hundred thousand dollars, lawful money of the United States, to be paid to the said James T. Soutter, survivor, &c, his executors, admnisitrators, or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this seventeenth day of April, A. D. 1866.

220 Whereas the above-named Milwaukee & St. Paul Railway Company has appealed to the Supreme Court of the United States to reverse the order and decree made in the above-entitled suit by the said circuit court of the United States on the sixteenth day of April, A. D. 1866: Now, therefore, the condition of this obligation is such that, if the above-named Milwaukee and St. Paul Railway Company shall prosecute its said appeal to effect, and answer all damages and costs if it shall fail to make good its appeal or plea, and if said order and decree shall be affirmed or the appeal be dismissed, shall pay the amount directed to be paid thereby, then this obligation to be void; otherwise to remain in full force and virtue.

The Milwaukee & St. Paul R'y Co.—
[SEAL.] By AL'X MITCHELL, *P't.*

Sealed and delivered in presence of—

AL'P MITCHLL. [SEAL.]
RUSSELL SAGE. [SEAL.]
S. CHAMBERLAIN. [SEAL.]
N. A. COWDRY. [SEAL.]
H. GALPIN. [SEAL.]
F. P. JAMES. [SEAL.]
E. B. WESLEY. [SEAL.]
W. HUNT. [SEAL.]
W. S. GREENE. [SEAL.]

Attest: A. CARY, *Sec'y.*

Indorsed: "April 26, 1866. This bond is approved as a supersedeas by the court. G. A. Miller, judge."

MAY 2, 1866.

This day came David W. Hughes and others, by John M. Cary, their solicitor, and, by leave of the court, filed their petition praying the modification of the order of April 19, 1866, and requiring the receiver to first pay the coupons of the first mortgage, as follows, to wit:

Circuit court of the United States, district of Wisconsin.

J. T. SOUTTER, survivor, &c.,
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the judges of the circuit court of the United States for
221 the district of Wisconsin:

Your petitioners, Joseph Roadweld, of Boston, and a citizen of the State of Massachusetts, and David M. Hughes and Fred. P. James, of the city of New York, and citizens of the State of New York, respectfully show unto this honorable court that they are, each of them and severally, the holders of bonds issued under and secured by the mortage given by the La Crosse and Milwaukee Railroad Company to Francis A. Palmer, and bearing date , 1854; that default has been made in the payment of the interest coupon attached to each of said bonds falling due May 1, 1866, amounting to forty dollars on each bond of one thousand dollars, and the same remains wholly unpaid. That said mortgage, so as aforesaid given to Francis A. Palmer, is the first lien upon the said La Crosse and Milwaukee railroad, and the first pledge made by said La Crosse and Milwaukee Railroad Company of its revenues and income.

That your petitioners are informed and believe that there is now in the hands of Hans Crocker, receiver of this court in this cause, the sum of fifty-eight thousand and one hundred and fifty-three 97-100 dollars, subject to certain deductions and claims of said Crocker, arising from the operation of said railroad by said Crocker as such receiver; and that, as your petitioners are informed and believe, this court has at this present term decided and adjudged that said moneys in his hands are pledged to the payment of the interest coupons attached to the several bonds issued under and secured by the several mortgages given by said La Crosse and Milwaukee Railroad Co. on its said road; and that an order of this honorable court has been made at this present term, directing the payment thereof on coupons of bonds issued under and secured by mortgages given by said La Crosse and Milwaukee Railroad Company, subject and inferior to the mortgage under which your petitioners' said bonds were issued, but that, as your petitioners are informed and believe, no part of said moneys has been paid out by said receiver under said order.

Your petitioners, therefore, claim and insist that under the afore-

said direction of this honorable court, the mortgage under which your petitioners' said bonds were issued is the first and superior lien upon said funds so in the hands of said Hans Crocker, re-
222 ceiver, and that the same should be applied first in payment of the interest coupons now past due on said mortgage so as aforesaid given to said Francis A. Palmer, and that only the residue or balance remaining in his hands after paying said last-mentioned coupons be applied in payment of the interest coupons now past due on the bonds issued under subsequent mortgages.

Your petitioners therefore pray that the order so as aforesaid made, directing the receiver to pay said moneys so in his hands on the interest coupons of the bonds issued under the mortgages given by said La Crosse and Milwaukee Railroad Company to the city of Milwaukee and to Bronson and Soutter, may be vacated and annulled, and that said receiver may be directed to first pay out of said moneys the interest coupons maturing May first, 1866, on the bonds issued under the mortgage so as aforesaid given to Francis A. Palmer, and the residue and remainder in his hands after paying the coupons last named may be paid on the past due coupons of bonds issued under the subsequent mortgages, according to their priorities.

JOSEPH ROADWELD,
D. M. HUGHES, and
FRED. P. JAMES.
By JOHN W. CARY.
JOHN W. CARY,
Solicitor and of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on this 2d day of May, 1866, personally appeared before me John W. Cary, the solicitor of the above-named petitioners, and made oath that he had read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JAMES McFARLIN,
U. S. Com'r, Dist of Wis.

MAY 8, 1866.

This day came the parties by their counsel, and the petition of David M. Hughes and others, praying a modification of the order of the 19th day of April, 1866, or may be vacated and that the
223 receiver may be directed to first pay the interest maturing on the first day of May, 1866, on the first or Palmer mortgage, came on to be heard, and was argued by counsel.

Whereupon it is ordered by the court that said petition be, and the same hereby is, denied.

JUNE 5, 1866.

This day a bond of the Milwaukee and Minnesota Railroad Company, with Josiah A. Noonan and Peter McNabb as sureties, to Hans

Crocker, dated June 4, 1866, in the penalty of twenty thousand dollars, conditioned for the indemnity of said Hans Crocker as receiver, against certain contingent claims mentioned in the report of H. L. Palmer, special master, and given pursuant to former orders of court, was approved by the court and filed, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Know all men by these presents, that the Milwaukee and Minnesota Railroad Company as principal, and Josiah A. Noonan and Peter McNab as sureties, are jointly and severally firmly bound unto Hans Crocker, his heirs, executors, administrators or assigns, in the penal sum of twenty thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ouselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals, this 4th day of June, A. D. 1866. *Provided, however*, that this bond is given upon the following condition, viz: Whereas this court made an order in this cause, on the 18th day of July, A. D. 1865, in regard to the Milwaukee and Minnesota Railroad Company entering into the possession of the mortgaged premises in this cause, to the effect that said company should before entering into such possession give and execute to said Hans Crocker its bond in the penal sum of twenty thousand dollars, with sufficient surety, to indemnify him for and against contingent liability
224 mentioned in the report of H. L. Palmer, auditor in this cause, before then made to said court. And whereas said company did, on or about the 9th day of January last, file such bond with William R. Griffith, A. Fleming, and A. C. Gunnison as sureties, which bond was approved by the clerk of said court. And whereas by an order of this court in this cause on the 19th day of April, A. D. 1866, it was ordered that the receiver, Hans Crocker, retain in his hands the sum of twenty thousand dollars of the funds in his hands until bond or security should be given by said company to be approved by the judge or court according to the previous order of the court aforesaid:

Now, therefore, the condition of this bond is this, that if the said Milwaukee and Minnesota Railroad Company and the said Josiah A. Noonan and Peter McNab, or either of them, shall well and truly indemnify, and save harmless, the said Hans Crocker, his heirs, executors or administrators, or cause the said Crocker to be saved harmless and fully indemnified from all loss or damage on account of the contingent liability aforesaid, viz: a claim of Franz Loof, administrator of the estate of Nicholas Hull, for $5,000 dollars, a claim of Peter Roth, administrator of the estate of Matthias Schule, for $5,000 dollars,

and a claim of Joseph Lents for $10,000 dollars, specially described in said auditor's report, then this bond shall be void, otherwise of force.

The Milwaukee and Minnesota Railroad Company—

[SEAL.] By JOHN P. GREEN, *Treasurer.*
[SEAL.] J. A. NOONAN,
[SEAL.] P. McNAB.

DISTRICT OF WISCONSIN, STATE OF WISCONSIN,
Milwaukee County, ss:

Josiah A. Noonan and Peter McNab, being first duly sworn, each for himself on oath says that he is worth the sum of twenty thousand dollars over and above all liabilities and exemptions, and that he is a resident of the State and district of Wisconsin.

J. A. NOONAN.
P. McNAB.

Subscribed and sworn to before me, this 4th day of June, A. D. 1866.

SIMEON KING,
Notary Public Mil. Co.

225 Indorsed: "I hereby approve this bond and the sureties thereto, this 5th day of June, A. D. 1866.
"By the court:
"A. G. MILLER,
District Judge."

SEPTEMBER 10, 1866.

This day came the complainant by his solicitor and filed his petition for an order of sale as follows, to wit:

Circuit court of the United States, district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The petition of the complainant shows to this court that the interest on the bonds and mortgage set forth in the bill of complaint which became due and payable on the first day of September, A. D. 1866, has not been paid, and that there is now due on the said bonds and mortgage the sum of forty thousand dollars.

Your petitioner further states that the mortgaged premises described in the pleadings in this suit and in the decree of sale are subject to two mortgages having a priority of lien to the mortgage of the complainant, and that there is due now and unpaid on the first of the said mortgages the sum of thirty-eight thousand dollars for interest, and the further sum of seventy-two thousand dollars on the sinking fund, and that there is now due and unpaid on the second of said mort-

gages, known as the city mortgage, the sum of ten thousand nine hundred and ninety dollars for interest. Your petitioner further states that there is due from said railroad to the State of Wisconsin, for a license for the year 1866, the sum of ten thousand four hundred dollars, for the non-payment of which the charter under which the said road is operated is liable to forfeiture.

Your petitioner further states that the Milwaukee and Min-
226 nesota Railroad Company, one of the defendants in this suit, took possession of the said railroad, under an order of this court, in the month of January last, and that since that time the said defendant has been in the full and exclusive possession of the entire receipts of the said railroad, and that the said receipts and no part thereof has been applied either to the payment of the said interest or sinking fund of the said first mortgage, or to the payment of said interest on the city mortgage, or to the payment of the said sum of money for a license from the State of Wisconsin, or for the interest due on the bonds and mortgage described in the pleadings in this suit.

And your petitioner further states that proceedings have been instituted to foreclose the first mortgage for the non-payment of interest and sinking fund, and on information and belief, that the attorney general of the State of Wisconsin is about to institute proceedings for the forfeiture of the franchises of the said road as provided by the statute in consequence of the non-payment of the said license, whereby the security for the bondholders represented by your petitioner has become greatly impaired, and may be entirely lost.

Your petitioner, therefore, prays that an order of sale in the usual form may be made as provided in the decree of foreclosure rendered in this suit, and in the meantime, and until such sale and the confirmation thereof, that a receiver may be appointed by this honorable court to take possession of the said railroad and the receipts thereof, and apply the same under the direction of the court to the payment of the said several sums of money so due as aforesaid, and that the said Milwaukee and Minnesota Railroad Company be directed to give possession to the said receiver of all and singular the mortgaged property as described in the decree in this suit, and for such other or further relief as may be just and equitable. And your petitioner will ever pray, &c.

THOMAS L OGDEN,
Sol. for Comp't.

DISTRICT OF WISCONSIN, *ss:*

227 Thomas L. Ogden, being duly sworn, says that the complainant in this suit is a non-resident of this district; that deponent is the solicitor in this suit; that deponent has read the foregoing petition and knows the contents thereof; that he has information as to all the matters therein stated, and from such information he believes such matters to be therein truly stated, and such petition to be true.

THOMAS L. OGDEN.

Subscribed and sworn to before me, this 10th day of September, A. D. 1866.

JAMES McFARLIN,
U. S. Commissioner, Dist. of Wis.

SEPTEMBER 17, 1866.

This day came the parties, by their counsel, and the petition of the complainant for an order of sale came *came* on to be heard, and was argued by counsel; whereupon the court took the same under advisement.

SEPTEMBER 18, 1866.

This day came the parties, by their counsel, and on reading the the petition of the complainant filed September 10, 1866, in this cause, and on reading the decree made by this court on the 27th day of September, A. D. 1864, and it appearing to this court that the principal sum secured by the bonds and mortgage set forth in the complaint is one million of dollars; that the amount of interest now due, and which became due on the first day of September, 1866, is the sum of forty thousand dollars; and on motion of Thomas L. Ogden, solicitor for the complainant, it is ordered, adjudged, and decreed, and this court doth hereby order and decree, that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount owing to the complainant for the several bondholders, for principal, interest, and costs in this cause, be sold at public auction under the direction of the marshal of this district. And it is further ordered that the said sale be made at the post office in the city of Milwaukee, within this district, where the said premises are situated, and that the said marshal give public notice
228 of the time and place of such sale, by advertisement published in some newspaper printed in said city and in two newspapers printed in the city of New York, at least once in each week for twelve successive weeks previous to the day of sale, and that the said complainant, or any of the parties to this cause, may become the purchaser thereof, and that said marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises, and that the said marshal pay to the complainant or his solicitor, out of the proceeds of such sale, his costs in this cause to be taxed, and which have not already been paid.

And it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part and parcel thereof, when said sale shall be confirmed.

And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged premises at such sale be let into the possession thereof, and that any of the parties to this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, has come into

possession under them, or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises and a certified copy of the order confirming the report of sale.

And it is further ordered and decreed that the purchaser or purchasers at such sale may pay therefor in the bonds and coupons of the La Crosse and Milwaukee Railroad Company, included in this decree, in proportion as the amount bid bears to the whole sum secured by the mortgage, after payment of costs and expenses of sale, and that the marshal report to the court the bonds secured by the said mortgage, and the coupons of such bonds respectively, by their amounts and numbers respectively, not presented or paid to him on or towards the purchase of the said mortgage premises, and also the share and amount of the purchase money of the mortgaged premises applicable to the payment of the bonds and coupons last mentioned.

And it is further ordered and agreed that, in case of a sale of the mortgaged premises under this decree, the proceeds shall be
229 applied to the balance of the interest due; and if such proceeds exceed such balance, the same shall be applied to the further accruing interest down to the date of such sale, and if the proceeds exceed such balance, the same shall be applied to the principal of the bonds, in case the bondholders assent, or pro rata to to those who may assent. And any remaining balance of the said proceeds be invested, under the direction of the court, for the payment of future accruing interest, and ultimately for the principal.

The description of the property authorized to be sold under and by virtue of this order is as follows, viz:

All and singular the railroad of said company, commencing in the city of Milwaukee and running thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown by way of Columbus to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, was constructed at the time of the execution of the said mortgage and was then in full operation, including all and singular the several tracts, pieces, or parcels of land which then did or might thereafter constitute the site of the roadways, town sites, engine-houses, workshops, depots, and other buildings, and all other land and real estate which then constituted, or might thereafter constitute, or be a part of, or appertaining to, said railroads, or either of them; and also all and singular the superstructure of said railroads, whether then made or made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appurtenant to said railroads, or either of them, whether then built or made; and also all and singular the locomotive engines, cars, and rolling stock, and all the materials, tools, implements, and utensils,
230 and other personal property which had been procured for or used

in connection with said roads, or either of them, prior to the appointment of Hans Crocker as receiver of said road, except forty box cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and including as part of said mortgaged premises such proportion of the rolling stock, bought by the receiver since his appointment, as the net earnings of the eastern division of said railroad bears to the earnings of the western division, as ascertained by the report of H. S. Palmer, and as confirmed by the court; and also all and singular the rights, liberties, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by way of Columbus to Midland aforesaid, and all the property, real and personal, and all the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown by the way of Columbus to Midland.

It is further ordered that the marshal sell all the other property mentioned in this decree first, and before he sells the railroad from Watertown by way of Columbus to Midland, and that this shall not be sold if that which is first sold shall bring a sufficient sum to satisfy the debt, interest, and costs mentioned in this decree.

And it is further ordered that this decree, and any sale thereunder, shall be without prejudice to any claim, right, or interest of the defendant, Ephraim Manner, to a part of the premises covered by the mortgage described in the bill in this cause, as purchaser under a judgment of the circuit court of Milwaukee county in the case of Avery Hill and A. V. Rudd *vs.* The La Crosse and Milwaukee Railroad Company, recovered September 27, 1858, and under a judgment of the county court of Milwaukee county in the case of Joseph
231 Carney *vs.* The La Crosse and Milwaukee Railroad Company, rendered September 29th, 1858, which premises are known and described as the west sixty feet of lots five, six, and seven, and of the alley between lots five and six in block forty-one, in the second ward of the city of Milwaukee.

And it is further ordered, adjudged, and decreed that any party or person interested may, at any time before a sale of the mortgaged premises under this decretal order, pay to the marshal of this district the amount of said coupons or interest warrants which fell due on the first day of September, 1866, together with interest thereon from that day to the day of such payment, and the costs of executing this order; and that in that case no sale of the mortgaged premises shall be made under this order, and that such payment may be made in the said coupons, or in money, or in both.

A. G. MILLER.

And came Alexander Fleming, by his counsel, Mr. Carpenter, and prayed an appeal from the foregoing order of sale, as follows:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Here in court comes A. Fleming who, by leave of court, defends in this cause in the name of the Milwaukee and Minnesota Railroad Company, and respectfully prays an appeal to the Supreme Court of the United States from the decretal order of sale by this court this day made in this cause, and prays this court to fix, by an order in this cause, the amount of a bond to be given to stay proceedings on said appeal.

Sept'r 18th, 1866.

MATT. H. CARPENTER,
Solicitor for A. Fleming.

Whereupon it is ordered by the court that an appeal as prayed for be allowed, and that the appellant enter into bond in the penalty of fifty thousand dollars, with sufficient surety or sureties, to be approved by the court or judge, as a supersedeas of the sale under the aforesaid order. And this appeal is not to prevent or delay the complainant to proceed to advertise the sale according to this order of sale. as if this appeal had not been allowed, leaving it to the
232 Supreme Court before the sale is made to decide upon the right of said Fleming to appeal or to supersede the sale.

SEPTEMBER 19, 1866.

This day came Messrs. Finches, Lynde & Miller, and filed the following motion, to wit:

United States circuit court for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Now comes the Milwaukee and Minnesota Railroad Company, by Finches, Lynde & Miller, its attorneys, and moves the court that Finches, Lynde & Miller be substituted as its solicitors and counsel in the above-entitled cause upon the papers filed herewith.

FINCHES, LYNDE & MILLER,
Attorneys.

The paper referred to in above motion as being filed therewith.

OFFICE OF RANDOLPH, ALEXANDER & GREEN,
Counsellors at Law, No. 20 Exchange Place, in rear of Custom-House, New York, September 13, 1866.

Messrs. Finches, Lynde & Miller:

GENTLEMEN: On the 7th instant I wrote M. H. Carpenter, esq., to transfer to you the legal business of the Milwaukee and Minnesota Railroad Company. I now send you this by Mr. J. P. Green, treasurer of the company, with whom you will please confer. I will thank you to keep me advised as to the position of legal matters in regard to the company.

Respectfully,

ASHBEL GREEN,
Ch. Ex. Court.

233 SEPTEMBER 29, 1866.

This day came Alexander Fleming, by his counsel, and filed his appeal bond, and as a supersedeas in the penalty of fifty thousand dollars with William R. Griffith, William A. Guest, Charles Jenkins, and A. S. Bright as sureties, as follows, to wit:

234 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Know all men by these presents, that we, Alexander Fleming, as principal, and William R. Griffith, of the city of New York, gentleman, Wm. A. Guest, of the same place, banker, Charles Jenkins, of the city of Brooklyn, State of New York, banker, and Aaron S. Bright, of the city of New York, gentleman, as sureties, acknowledge ourselves to be held and firmly bound unto James T. Soutter, complainant in this cause, in the sum of fifty thousand dollars, to be paid to the said James T. Soutter, complainant, his executors, administrators, or successors, in lawful money of the United States; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 18th day of September, A. D. 1866.

The condition of the obligation is this, that whereas the above-named Alexander Fleming has appealed to the Supreme Court of the United States from a certain decretal order of sale by the circuit court of the United States for the district of Wisconsin, in equity, this 18th day of September, A. D. 1866, in the above-entitled cause: now therefore, the condition of this obligation is such that if the said Alexander Fleming shall prosecute his said appeal to effect, and an-

swer all costs and damages and any order or decree the said Supreme Court may make and render if he shall fail to make good his said appeal, then this obligation shall be void; otherwise, the same shall remain in full force and effect.

[SEAL.] ALEXANDER FLEMING.
[SEAL.] WILLIAM R. GRIFFITH.

[SEAL.] WM. A. GUEST.
[SEAL.] CHARLES JENKINS.
235 [SEAL.] A. S. BRIGHT.

Signed, sealed, and delivered in presence of—
R. E. STILWELL, *U. S. Comm'r.*

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurats, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a United States commissioner duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninety-first.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent revenue stamp, cancelled.]

UNITED STATES OF AMERICA, *Southern District of New York;*
State, City, and County of New York, ss:

William R. Griffith, of said city, being duly sworn, says, I reside at No. 47 West 31st street, in the city of New York; I am not engaged in any business; I am a resident and householder within said city and State of New York, and am worth the sum of fifty thousand dollars over and above all debts and liabilities and exemptions of property from forced sale or execution.

WM. R. GRIFFITH

Subscribed and sworn to before me, this 25th day September, 1866.

R. E. STILWELL, *U. S. Com.*

[5-cent revenue stamp, cancelled.]

235 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William A. Guest, being duly sworn, says, I reside at 86 Ninth street in the city of New York; I do business at No. 31 Wall street

in the city of New York; I am a banker; I am a resident and householder in the city of New York, and am worth the sum of fifty thousand dollars over and above all debts and liabilities, and exemptions of property from forced sale on execution.

W. A. GUEST.

Subscribed and sworn to before me, this 25th day of September, 1866.

R. E. STILWELL, *U. S. Comm'r.*

[5-cent revenue stamp, cancelled.]

UNITED STATES OF AMERICA, *Southern District of New York, ss:*

Charles Jenkins, being duly sworn, deposes and says that he is a householder and resides at 22 Monroe Place, Brooklyn; that he is president of the East River National Bank in the city of New York, and am worth the sum of fifty thousand dollars over and above my just debts and liabilities, and exemptions of property from forced sale on execution.

CHARLES JENKINS.

Subscribed and sworn to before me, this 26th September, 1866.

R. E. STILWELL, *U. S. Comm'r.*

[5-cent rev. stamp, cancelled.]

237 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Aaron S. Bright, being duly sworn, deposes and says that he resides in the city of New York; have an office at 20 Broad street, but have no particular business, and am worth the sum of twenty-five thousand dollars over and above all my debts and liabilities, and exemptions of property from forced sale on execution.

A. S. BRIGHT.

Subscribed and sworn to before me, this 26th September, 1866.

R. E. STILWELL, *U. S. Comm'r.*

[5-cent rev. stamp, cancelled.]

And came the complainant's counsel and filed exceptions to such bond as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

And now comes the complainant, by Thomas L. Ogden, his solicitor, and objects to the bond of A. Fleming and others, this day submitted, to supersede proceedings under the order of this court made made on the 18th day of September, A. D. 1866, for the following causes, that is to say—

First. Because neither the said Fleming, nor any of the sureties to the said bond, are residents of this district.

Second. Because the said Fleming and the said sureties, as well as the complainant, are all citizens of the State of New York, and no court of the United States would have jurisdiction in a suit on said bond.

Third. Because the said bond was not tendered within ten days, exclusive of Sundays.

Fourth. Because the said Fleming is not a party to the record and has no right of appeal.

238 Fifth. Because the condition of the said land does not indemnify the complainant against the damages he may suffer by reason of the said appeal.

Dated September 29, 1866.

THOMAS L. OGDEN,
Sol'r for Complainant.

Whereupon it is ordered by the district judge as follows: "Sept. 29, 1866. Bond approved, submitting the exceptions thereto to the Supreme Court of the United States.

"A. G. MILLER, *District Judge.*"

And came the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its petition praying an appeal to the Supreme Court of the United States from the order of sale aforesaid, with the allowance of the appeal indorsed thereon, as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and others, defendants.
} Foreclosure suit.

To the judges of the said circuit court, to Hon. Andrew G. Miller, district judge of the United States for the district aforesaid, one of the judges of said circuit court:

Your petitioner, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, humbly complaining, respectfully represents that it, said company, is a party defendant in the above-entitled cause, and the owner of the equity of redemption of the mortgage premises described in the mortgage, to foreclose which this suit was commenced, as appears by the record and proceedings in this cause; and that it is aggrieved and injured by a certain decretal order of sale made by said circuit court, in equity, in this cause, on the 18th day of September, A. D. 1866, by
239 which order, among other things, the said mortgage premises

were ordered to be sold, as appears by the said order now of record in this cause; and your petitioner respectfully prays for and demands an appeal to the Supreme Court of the United States from said decretal order made as aforesaid, and for a citation according to law, and for supersedeas of said order, pending said appeal; and your petitioner herewith offers its bond, with sureties to be approved, for such supersedeas, in the penal sum of fifty thousand dollars, with sureties who justify according to law.

And your petitioner will ever pray, &c.

The Milwaukee and Minnesota Railroad Company—

By MATT. H. CARPENTER,
Its Solicitor.

SEPT. 29TH, 1866.

An appeal allowed as prayed for in the foregoing petition. Bond for supersedeas, with sureties in $50,000.

A. G. MILLER, *District Judge.*

And came the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its bond on appeal and for a supersedeas in the penal sum of fifty thousand dollars, with William R. Griffith, William A. Grust, A. S. Bright, and Charles Jenkins, as sureties, as follows, to wit:

240 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

Know all men by these presents, that we, the Milwaukee and Minnesota Railroad Company as principal, and William R. Griffith, of the city, county, and State of New York, gentleman; William A. Guest, of the same place, banker; Charles Jenkins, of the city of Brooklyn, State of New York, banker; and Aaron S. Bright, of the city of New York, gentleman, as sureties, acknowledge ourselves to be held and firmly bound and are so held and bound unto James T. Soutter, complainant in this cause, in the sum of fifty thousand dollars, to be paid to the said James T. Soutter, complainant, his executors, administrators, or successors, in lawful money of the United States, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 25th day of September, A. D. 1866.

The condition of this obligation is this, that whereas the above named the Milwaukee and Minnesota Railroad Company is about to apply to the said circuit court of the United States for the district of Wisconsin for an appeal to the Supreme Court of the United States

from a certain decretal order of sale made by said circuit in this cause, on the 18th day of September, A. D. 1866.

Now, therefore, the condition of this obligation is such, that if the said Milwaukee and Minnesota Railroad Company shall prosecute its said appeal to effect, and answer all costs and damages, and any
241 order or decree the said Supreme Court may make and render if it shall fail to make good its said appeal, then this obligation shall be void; otherwise the same shall remain in full force and effect.

The Milwaukee and Minnesota Railroad Company—

[SEAL.] By A. FLEMING.
Vice President.

[SEAL.] WM. R. GRIFFITH.
[SEAL.] M. A. GUEST.
[SEAL.] CHARLES JENKINS.
[SEAL.] A. S. BRIGHT.

Signed, sealed, and delivered in the presence of—
R. E. STILWELL, *U. S. Com.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurats, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninety-first.

[SEAL AND STAMP.] KENNETH G. WHITE, *Clerk.*

242 UNITED STATES OF AMERICA, *Southern District of New York, State, City, and County of New York, ss:*

William R. Griffith, of said city, being duly sworn says, I reside at No. 47 West 31st street, in the city of New York. I am not engaged in any business. I am a resident and householder within said city and State of New York, and am worth the sum of fifty thousand dollars over and above all my debts and liabilities, and all exemptions of property from forced sale on execution.

WM. R. GRIFFITH.

Subscribed and sworn to before me, this 25th day of September, 1866.

R. E. STILWELL,
U. S. Com'r.

[Stamp.]

UNITED STATES OF AMERICA, *Southern District of New York, City and County of New York, ss:*

William A. Guest, being duly sworn, says, I reside at 86 Ninth street, in the city of New York. I do business at No. 31 Wall street in the city of New York. I am a banker. I am a resident and householder in the city of New York, and am worth the sum of fifty thousand dollars over and above all debts and liabilities, and exemptions of property from forced sale on execution.

WM. M. GUEST.

Subscribed and sworn to before me, this 25th day of September, 1866.

R. E. STILWELL,
U. S. Comm'r.

[Stamp.]

243 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles Jenkins, of the city of Brooklyn, being duly sworn, deposes and says: I reside at 22 Monroe Place, Brooklyn: am president of the East River National Bank in the city of New York; am a householder, and am worth the sum of fifty thousand dollars over and above my debts and liabilities, and exemptions of property from forced sale on execution.

CHARLES JENKINS.

Subscribed and sworn to before me, this 26th September, 1866.

R. E. STILWELL,
U. S. Comm'r.

[Stamp.]

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

Aaron S. Bright, being duly sworn, deposes and says, that he resides in the city of New York; has no particular business, but has an office at 20 Broad street, in said city, and am worth the sum of twenty-five thousand dollars over and above all my debts and liabilities, and exemptions of property from forced sale on execution.

A. S. BRIGHT.

Subscribed and sworn to before me, this 26th September, 1866.

R. E. STILWELL,
U. S. Com'r.

And came the complainant, by his counsel, and filed exceptions to said bond as follows, to wit:

Circuit court of the United States, district of Wisconsin.

244 JAMES T. SOUTTER, survivor, &c.,
agst.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

And now comes the complainant, by Thomas L. Ogden, his solicitor,

and objects to the bond offered by the Milwaukee and Minnesota Railroad Company, on the prayer for an appeal and a citation, so far as the same may operate as a supersedeas of proceedings under the order of the court made on the 18th day of September, A. D. 1866, for the following causes:

First. Because all the sureties on the said bond are non-residents of the district.

Second. Because the said sureties and the said complainant are all citizens of the State of New York, and no court of the United States could have jurisdiction in a suit on the said bond against said sureties.

Third. Because this application and the said bond are not made within ten days after the making the order appealed from, exclusive of Sundays.

Fourth. Because the said bond does not indemnify the complainant against the possible loss of his debt by reason of the stay of proceedings.

Fifth. Because the secretary of said company, who is custodian of its corporate seal, does not execute the bond and affix the seal.

Dated September 29, 1866.

THOMAS L. OGDEN,
Sol'r for Compl't.

Whereupon it is ordered by the district judge as follows, to wit:

SEPT. 29, 1866.

The bond approved, submitting the exceptions as to the non-residence of the sureties to the Supreme Court.

A. G. MILLER,
District Judge.

Whereupon a citation issued.

OCT. 3, 1866.

This day came the Milwaukee and Minnesota Railroad Company by its solicitor, and filed a reply to the petition of the complainant for a receiver as follows, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

245 JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others.

The Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, answering the petition of the said complainant exhibited and filed in this cause on the 10th day of September, A.D. 1866, among other things praying for a receiver in this cause, so far as the same pray for the said appointment of a receiver, respectfully represents:

That heretofore, to wit, in the month of December last, the said company applied to one J. Edgar Thomson and one Thomas A. Scott for a loan of a large sum of money, to wit, the sum of (450) four hundred and fifty thousand dollars, with which to pay off the interest and costs due and decreed to be paid to the complainant in this cause; and after some negotiation, an arrangement was entered into by and between said company and said Thomson and Scott in writing, as follows:

PENNSYLVANIA RAILROAD COMPANY,
OFFICE OF THE VICE PRESIDENT,
Philadelphia, Dec'r 27, 1865.

To the Milwaukee and Minnesota Railroad Company:

We will pay $450,000 into court, or to an officer of the court, in the city of New York, on or before January 3, 1866, which includes the amount raised by Messrs. Alexander and Green, to enable you to get possession of the road, upon the following terms:

1. Notes of the company for the principal, viz., $450,000, in such sums as we may elect, drawing nine per cent. interest, 300,000 payable on or before July 1, 1866, and the balance on or before the first day of January, 1867.

2. Collateral security to be placed in our hands as follows: 1. 400,000 of the 8 per cent. 3d mortgage bonds of the road, which may be sold by us at any time before the maturity of any of the paper, at not less than sixty-five per cent. on the dollar, and in case the notes or either of them are not paid at maturity, for such price as they will bring. 2. A judgment against the Milwaukee and St. Paul Railroad Company, secured by assignment with power to
246 settle the same as we may think proper, said judgment guaranteed by A. Mitchell, R. Sage, S. Chamberlain, E. W. Wesley, F. P. James, N. A. Cowdry, J. W. Carey, W. Hunt, W. S. Gurnee, H. Galpin; 3. 5,000 shares of the capital stock of the company, to be made of stock already issued, and so arranged that we shall vote upon the same at all elections until the principal, interest, and commissions herein stated are fully paid. To be sold on non-payment of any of the notes or default, at our option, and in addition and for all compensation we to receive—

4. The notes of the company, payable on demand, for two hundred and seventy thousand dollars, and seven per cent. interest; we agreeing not to enforce the same before the principal of $450,000 and interest is paid, and thereafter the first proceeds of line and securities pledged to be devoted to their payment.

5. Fifty-four thousand dollars also, as provided in section four.

6. One hundred thousand dollars also, as provided in section four.

7. An absolute transfer to us by the company or parties holding the capital stock, at our option, of 1,000 shares of $100 each.

8. A transfer of stock to us in amount as shall enable us to control the entire company, until principal, interest, and commission shall be fully paid.

'9. The resignation of five directors, and the appointment of the undersigned and three others whom we shall name, to be done forthwith, and continued in office until the whole matter is settled.

10. The payment to our counsel of ten thousand dollars, and the transfer of 1,000 shares to them of the aforementioned description of stock, together with their fees for drawing papers, &c., not exceeding $500.

11. All of the above to be paid on the decided opinion of Messrs. Alexander and Green as to the legal safety of the transaction, except as regards the right to the use of the western division, they to employ counsel at your expense, if they think proper.

12. An executive committee of three to be appointed, of which Mr. A. Fleming shall be one, he to be vice president, with a salary, but with such restrictions as may be thought proper by us as to the power to be exercised.

247 13. Meetings of the board to be held in Philadelphia when required by us.

14. We to use our best efforts to uphold the reputation of the company in all quarters, and to give our influence to this end.

15. We to name general manager and superintendent and treasurer, and name finance committee.

J. EDGAR THOMSON.
THOMAS A. SCOTT.

The Milwaukee and Minnesota Railroad Company hereby accept the foregoing proposition, with all its terms and conditions, stipulations and specifications.

Dated December 13th, 1865.

A. C. GUNNISON,
A. FLEMING,
Executive Committee.

That said contract was carried out by both parties; that said Thomson, said Scott, a Mr. Baird, of Philadelphia, Ashbel Green and Mr. Alexander, of New York, were elected directors of said company, in pursuance of said contract; that said Thomson and Scott advanced said money, which, with other money raised by said company, or some of its officers or stockholders, the amount due in this cause, over four hundred and sixty-seven thousand dollars, was paid over; and that said railroad and all its revenues have been managed and received by persons named and appointed for that purpose by said board of directors, or the executive committee thereof, of which said board the above-named persons constitute a majority; and that said Alexander is now the president of the said company, Alexander Fleming is vice president of said company, and John P. Green, esq., is treasurer of said company. And on information and belief, says that said Scott and said Ashbel Green, pretending to be the executive committee of said board, constituted as aforesaid, and to have all the powers of said board when said board is not in session, have made some arrangement with the Milwaukee and St. Paul Railway

Company, or its officers and directors, the details of which this respondent is unable to set forth, by which the said Scott and said Green have pretended to S. S. Merrill, esq., who is the gen-
248 eral manager of the said last-named company railroad, superintendent of the railroad of the said Milwaukee and Minnesota Railroad Company; and that said Merrill is now actually managing the same, and is in the actual or potential control of all the revenues of said last-named company; and by his direction the amount of State tax mentioned in said petition can any day be paid; and that the said treasurer has money received from the operating of said railroad of this company more than sufficient to pay said tax; and that said treasurer will this day pay the same, if the said Merrill will direct him to do so; that James T. Soutter, the complainant in this cause, has no interest personally in this cause; and that the said Milwaukee and St. Paul Railway Company or its officers and directors own nearly or quite all, and more than eight-tenths of all the bonds secured by the mortgage to foreclose which this suit was commenced; and that John W. Carey, esq., who is the regular attorney of said last-named company, is counsel for the complainant in this cause and has been for years; and that Russell Sage, one of the directors of said last-named company is the agent and attorney-in-fact of said complainant by power of attorney, filed in this cause; and that said Merrill can, and, if requested by the said owners of said bonds, will, direct said John P. Green to pay said State tax immediately; and that said John P. Green, if so directed, will immediately pay the same; that Mr. Alexander, the president de facto of said Milwaukee and Minnesota Railroad Company is under injunction issued from the supreme court of the State of New York for the city and county of New York, restrained from acting as such president; that said Fleming, as this affiant is informed and believes, telegraphed to said John P. Green that said Alexander was enjoined as aforesaid, and, as vice president of said company, ordered and directed said John P. Green to immediately pay said tax; that Albert C. Gunnison, as a director of said company, yesterday called on said John P. Green and requested him to immediately pay said tax, and that said Green informed said Gunnison that he had received the said telegram from said Flem-
249 ing, that he had money, as treasurer, sufficient to pay said tax, and that he would give the matter his immediate attention.

That Matt. H. Carpenter, the attorney of said last-named company, yesterday enclosed to said John P. Green a letter received by him, said Carpenter, from the attorney general of Wisconsin, in regard to said tax; and that said Carpenter also in writing advised and requested said treasurer to pay said tax at once, and on information and belief that said Carpenter day before yesterday called on said Merrill and requested him to see said tax immediately paid; that said Merrill informed said Carpenter that he would immediately attend to the matter; and that the tax must be immediately paid, if there was money sufficient in the hands of the said treasurer to pay the same.

And on information and belief this respondent says, that the said

tax will be paid within one week, unless the said Milwaukee and St. Paul Railway Company, or its officers or directors, induce said Merrill not to pay the same, or to order the same paid by said treasurer; and that the said last-named company, its officers, and directors, for the purpose of injuring the said Milwaukee and Minnesota Railroad Company, desire the appointment of a receiver in this action, that they have retained counsel to urge said appointment; and that the only reason why said Merrill will not order said tax paid, if he will not, is to aid the said plan of the said receivership.

The Milwaukee & Minnesota Railroad Company—

By MATT. H. CARPENTER,
Its Attorney and Solicitor.

DISTRICT OF WISCONSIN, *ss:*

Albert C. Gunnison, being first duly sworn, says on oath that he has heard read the foregoing answer, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and that as to that matter he believes the *the* same to be true; that the said Milwaukee and Minnesota Railroad Com-
250 pany is a corporation existing under the laws of the State of Wisconsin; that he is a director of said company, and makes this verification on its behalf.

A. C. GUNNISON.

Subscribed and sworn to before me, this 3d day of October, A. D. 1866.

JAMES McFARLIN,
U. S. Commissioner, District of Wisconsin.

Re-sworn to before me, October 3, 1866, after interlined and amended.

JAMES McFARLIN,
U. S. Commissioner, District of Wisconsin.

And the petition of the complainant for the appointment of a receiver came on to be heard, and was argued by counsel, and the court took the same into consideration, to be disposed of at any time, either in term or vacation.

251 Circuit court of the United States for the district of Wisconsin, in equity.

JAMES T. SOUTTER, survivor, &c.,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company and others, defendants.

DISTRICT OF WISCONSIN, STATE OF WISCONSIN,
Milwaukee County, ss:

Albert C. Gunnison, being duly sworn, on oath says that he is a director of the Milwaukee and Minnesota Railroad Company, which is a corporation of the State of Wisconsin, created by and existing

under the laws of said State, and has been conversant with its affairs and the proceedings of its board of directors for the last five years. That the following are by-laws of said corporation, duly passed and adopted by the board of directors of said company, viz:

"Section 14. There shall be appointed an attorney of the company, who shall hold his office during the pleasure of the board, and who shall have the care and management of all suits, causes, actions, and litigated matters of every description in which the company shall be a party or be interested; and he may employ such counsel as he shall think proper, in the prosecution or defence of any suit pending or contemplated in any court. He shall also perform such other professional duties as shall be required by the board of directors and the executive committee." * * * * * * *

"Section 17. The board of directors shall have power at any time, by a vote of the majority of entire board, to remove any officer of its own appointment, or that may have been appointed or employed by any officer of the company, and the president, superintendent, chief engineer, or commissioner, may remove at pleasure any subordinate officer or agent, in their respective departments, assigning reasons, if required, to the board of directors at their next meeting, as the cause of their removal."

This affiant further says, that some time in August, A. D. 1860, Matt. H. Carpenter was employed by certain stockholders of said company to defend their interests as such stockholders, and that said Carpenter was from that time constantly employed in and about certain litigation in which said company was a party or interested, acting in the name of and to protect the interests of said company, until at a meeting of the board of directors of said company, held in Milwaukee, in the month of June, A. D. 1862, when said board of directors, by resolution, appointed said Carpenter attorney for said company, and that said Carpenter has, ever since the day and year aforesaid, acted for and as the attorney, solicitor, and counsel of said company, and as such has had the entire control and management of all litigation and litigated matters in which said company has been a party or interested.

This affiant further says that the records of the proceedings of the board of directors of said company show that at a meeting of said board at Milwaukee, in the State of Wisconsin, on the 27th day of May, A. D. 1864, the following, among other, resolutions were passed and adopted by said board, viz:

"*Resolved*, That this company approves and hereby ratifies and affirms all that has been done in the name and on behalf of said company by its attorney, Matt. H. Carpenter, in the several suits and actions at law and in equity in the courts of the United States for the district of Wisconsin, and in the courts of the State of Wisconsin."

"*Resolved*, That the said Matt. H. Carpenter be requested and instructed, as the attorney, solicitor, and counsel of this company, to continue prosecution and defence for said company in the several suits, actions, and causes in the several courts where he has hereto-

'fore appeared on behalf of said company, or any of its stockholders, to prosecute and defend in the name of said company, or any of its stockholders, and to take such steps and proceedings therein, by appeals, writ of error, or otherwise, as he may deem for the best interests of said company."

"*Resolved*, That the secretary of said company, and each and every director of said company be, and each of them hereby is, authorized and directed to affix the seal of said company to any bill, answer, or petition, or other legal document whatever, on request, in writing or verbal, by said Matt. H. Carpenter."

"*Resolved*, That said Matt. H. Carpenter be, and he hereby is, directed to commence any suits, actions, or causes in any of the courts of the United States, or of the State of Wisconsin, or of any other State, at law or in equity, which he may deem necessary to protect the interests of this company."

252 "*Resolved*, That Alexander Fleming be, and he hereby is, appointed agent of this company, to conduct its litigation and business pertaining thereto; and this company hereby ratifies and affirms all that he has heretofore done in its name, or on its behalf, in regard to litigation in which this company is interested or a party."

This affiant further says that all the foregoing by-laws and resolutions of said board remain in full force, unrepealed, and not in any way abrogated or set aside; that no action of the said board has ever been taken in regard to removing said Matt. H. Carpenter as attorney, solicitor, and counsel for said company; and that said Carpenter is the only attorney of said company at the present time, and the only attorney authorized to act in causes or actions pending as the attorney or solicitor of said company.

This affiant further says that he is informed and believes that some time in January last the said Carpenter desired the firm of Finches, Lynde & Miller to be retained as associate counsel with him for said company; and that thereupon, and by said Carpenter's request, a retaining fee, or some fee, was paid by the general manager of said company to said firm, but that their retainer has never been acted upon by or submitted to the board of directors of said company for its approval, and that the said board of directors had never authorized the retaining of said Finches, Lynde & Miller, save by such delegation of authority as is contained in the foregoing by-law defining the duties and powers of the attorney of said company.

This affiant further says that he has heard it rumored, but has no personal knowledge of the fact, that Thomas A. Scott and Ashbel Green, two acting directors of said company, and acting members of an executive committee of the said board of directors, created by by-law as hereinafter stated, have pretended to dismiss the said Carpenter as attorney of said company.

This affiant further says that said Green has written a letter to said Carpenter pretending to act in that behalf as chairman of said committee informing him of such pretended action of said committee, but has not, as this affiant is informed and believes, sent to said Carpenter any copy of the record of such proceeding, nor has any mem-

ber of said committee, except said Green, informed said Carpenter of any such pretended action by said committee.

This affiant further says that by the fourth section of the charter of the La Crosse and Milwaukee Railroad Company, which is by express adoption of the Milwaukee and Minnesota Railroad Company its charter, it is provided that "all of the affairs of said corporation shall be managed by a board of seven directors, who shall be stockholders, and who are hereby invested with the powers of the corporation," &c. That said charter does not provide for or recognize any executive committee of said board; but that by section five of said charter it is provided that "a majority of the board of directors shall constitute a quorum for the transaction of any business;" * * * and that said board shall have power "to make and establish such by-laws, rules, orders, and regulations not inconsistent with the Constitution and laws of the United States, or of this State, as they shall think necessary for the well-ordering of the affairs of the said company," &c. That the board of directors, in pretended pursuance of this provision, have provided by by-law or resolution for the appointment of an executive committee of three, and that the president and vice president of said company shall be members of said committee, and that said committee shall possess all the powers of the board when the board is not in session.

This affiant further says that Alexander Fleming is now vice president of said company and a member of said committee, and that said Thomas A. Scott and said Ashbel Green pretend also to be members of and with said Fleming to constitute said committee, but that neither said Scott nor said Green is the president of said company, and that for that reason but one of them can properly serve on said committee, as this affiant is informed and believes.

This affiant further says that by the by-law or resolution in regard to said executive committee the said powers are conferred upon said committee of three, and that no provision is made for a majority of said committee to act as such committee in the absence of the third member of said committee, nor is any provision made that a majority of said committee may do any act or thing without the concurrenee of all the members of said committee.

This affiant further says that he is informed by said Fleming, and verily believes, that said executive committee, composed of said Scott, said Green, and said Fleming, have never taken any action whatever in regard to dismissing said Carpenter as attorney of said company or retaining said Finches, Lynde & Miller, and that any action which the said Scott or the said Green, or both of them, may have taken in the premises was taken by them in his absence and without his knowledge or consent.

This affiant further says that said Fleming, on being informed by rumor of the said pretended action of the said Green and Scott in that behalf, both wrote and telegraphed to the said Carpenter that he, said Fleming, had never consented and does not nor would consent to his, said Carpenter, being discharged as attorney, solicitor, and counsel of said company, and directed said Carpenter to pay no

heed to the said pretended action of said Scott and Green in that behalf.

This affiant further says that said Carpenter has never received any compensation for the services rendered by him prior to the 9th day of January, A. D. 1866; and that no settlement has ever been made between said Carpenter and said company in regard to his said services; but that since the 9th January last said Carpenter has been paid a monthly salary for services since that time.

A. C. GUNNISON.

Subscribed and sworn to before me, this 1st day of October, A. D. 1866.

JAMES McFARLIN,
U. S. Commissioner, Dist. of Wis.

253 UNITED STATES OF AMERICA, *Dist. of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office, and being a continuation of the record since the last appeal in said cause.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 17th day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the said United States the ninety-first.

[SEAL.] A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

[5-c. in. rev. stamp, cancelled.]

THE UNITED STATES OF AMERICA, *ss:*

To James T. Soutter, survivor, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Wisconsin, in the seventh circuit, wherein the Milwaukee and Minnesota Railroad Company is appellant and you are appellee to show cause, if any there be, why the decretal order mentioned in said appeal should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States, this 29th day of September, A. D. 1866.

A. G. MILLER, *District Judge.*
MATT. H. CARPENTER,
Sol. for App't.

I hereby admit due service of this citation this 29th of Sept., A. D. 1866.

THOMAS L. OGDEN,
Sol. for Comp't.